

(29,752)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 442

HELEN C. FRICK, PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF PENNSYLVANIA

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
PENNSYLVANIA

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[fol. 1a]

IN THE

**ORPHANS' COURT OF ALLEGHENY COUNTY, PENNSYLVANIA, DECEMBER TERM, 1920**

No. 476

In re Estate of HENRY C. FRICK, Deceased

**DOCKET ENTRIES**

Petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William W. Smith, as Executors of the Will of Henry C. Frick, and of Helen C. Frick as one of the devisees and legatees of the residue of the estate of the said Henry C. Frick, deceased, presented, showing that they have appealed from the decision of Wm. Conner, Register of Wills and Agent of the Commonwealth in the Appraisement made by him for transfer inheritance tax purposes of the property of the estate of said Henry C. Frick, deceased, said App't bearing date of November 26, 1920.

Wherefor your petitioners pray that your Honorable Court will sustain their appeal and determine all questions of Valuation of the property and of the liability of the said estate for transfer inheritance tax, subject to the right of Appeal.

[fol. 2a] Afft. filed.

And now, to wit, December 27, 1920, the foregoing petition was presented in open Court, and, upon consideration thereof, a citation is issued to William Conner, Register of Wills of Allegheny County and Agent of the Commonwealth, to show cause why the appeal should not be sustained and the property of the estate of the said Henry C. Frick, deceased, appraised and its liability for transfer inheritance tax determined in accordance with the terms of the petition, returnable Jan. 26, 1921.

Per Curiam.

Dec. 27, 1920.—Proofs of Service of Citation filed.

And now, January 25, 1921 the time for filing the Answer of the Comth. to the citation heretofore issued upon the Appeal from inheritance tax appraised is extended to March 1st, 1921.

Per Curiam

February 25, 1921.—Answer filed.

Stipulation as to valuation filed.

And now, Dec. 1, 1921, the within stipulation presented in open Court, approved and ordered to be filed.

Per Curiam.

It is stipulated and agreed that on the trial of this appeal and in all proceedings connected therewith all statutes and decisions of all

of the States of the United States and of the Provinces of Quebec and Ontario shall be taken to be in evidence and that the Court may judicially notice any such statutes or decisions that may be called to its attention by either party.

In compilation of any record on appeal or other transcript of the proceedings, only such statutes or decisions shall be printed as shall be designated by either party.

[fol. 3a] The right of appeal from any decision in this matter is specifically reserved to both parties, notwithstanding this or any other stipulations that the parties may make as to the facts.

David A. Reed, For the Commonwealth. Geo. B. Gordon,  
For the Appellant.

And now, February 2, 1922, the within Stipulation presented in open Court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

Stipulation as to the devise and bequest in Article 5 of the Will to the City of Pittsburgh of 151 Acres for a park and to the Union Trust Company of Pittsburgh of the sum of \$2,000,000.00 as an endowment for the Park.

And now, February 2nd, 1922, the within Stipulation presented in open Court, approved and ordered to be filed as part of the record, in this case.

Per Curiam.

Stipulation as to the tangible personal property located in the State of New York and Massachusetts other than the Frick Collection.

And now, February 2nd, 1922, the within Stipulation presented in open Court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

Stipulation as to Administration expenses, debts and taxes.

And now, February 2nd, 1922, the within Stipulation presented in open Court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

[fol. 4a] Stipulation as to that portion of the tangible personal property located in the City of New York known and referred to in the inventory as "The Frick Collection" and which is appraised in the inventory at the aggregate amount of \$13,132,391.00.

And now, February 2nd, 1922, the within Stipulation presented in open Court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

And now, to wit, July 7th, 1922 this matter came on to be heard upon petition and appeal from the appraisal and assessment of Transfer Inheritance Tax, answer thereto, testimony taken and stipulations filed and was argued by Counsel and upon consideration thereof, it is ordered, adjudged and decreed the appeal be sustained in part and dismissed in part as shown by the calculation as to amount of Tax hereto attached and made part hereof.

Per Curiam.

Opinion by Mitchell, J.

#### COMPUTATION OF TAX

Clause of will	Property	Value	Rate of tax	Tax
Art. 1, Sec. 2.—Personal Effects:				
	Pittsburgh .....	\$3,050.00		
	New York.....	77,818.75		
	Prides Crossing.....	325,534.25		
		406,403.00	2%	\$8,128.06
Art. 1, Sec. 2:				
	Legacy Mrs. Frick.....	1,000,000.00	2%	20,000.00
Art. 1, Sec. 3:				
	Legacy Mrs. Frick.....	5,000,000.00	2%	100,000.00
[fol. 5a] Art. 1, Sec. 6:				
	Frick Building, Frick Annex....	5,900,000.00	2%	118,000.00
Art. 1, Sec. 7:				
	Legacy Helen Frick.....	1,000,000.00	2%	20,000.00
Art. 1, Sec. 8:				
	Legacy Helen Frick.....	5,000,000.00	2%	100,000.00
Art. 1, Sec. 9:				
	Legacy Childs Frick.....	2,000,000.00	2%	40,000.00
Art. 1, Sec. 10:				
	Legacy Childs Frick.....	1,000,000.00	2%	20,000.00
Art. 1, Sec. 12:				
	Legacy Frances Frick.....	2,000,000.00	2%	40,000.00
		\$23,306,403.00		\$466,128.06
Art. 2:				
	Legacy Collateral relatives (16 persons vide Audit Statement) \$50,000 each plus an extra \$50,000 to Karl Overholt.	850,000.00	5%	42,500.00
Art. 3:				
	Legacy Helen Frick.....	200,000.00	2%	4,000.00
	Legacy J. P. Grier.....	100,000.00	5%	5,000.00
	Legacy G. Despres.....	20,000.00	5%	1,000.00
Art. 4, Sec. 3:				
	Frick Collection.....	13,132,391.00	5%	656,619.55
Art. 4, Sec. 4:				
	Legacy F. Coll.....	15,000,000.00	5%	750,000.00
Art. 5:				
	Legacy Park Fund.....	2,000,000.00		
(Exemption by Orphans' Court decision.)				
				\$1,925,247.61

Clause of will	Property	Value	Rate of tax	Tax
[fol. 6a] To which is added the value of the 14th Ward Park Property devised to the City of Pittsburgh, in Art. 5.....				
			375,000.00	
Legacies to Executors.....			500,000.00	
Legacies to Trustees of Frick Collection.....			300,000.00	
				\$55,783,794.00
Grand Total Value of Real Estate in Penna. and Personal Property in all places as fixed by stipulation.....				
				\$89,595,084.27
Assets shown in Supplemental Inventory.....				49,061.00
Assets not inventoried (See Ex'c's 1st Acct.).....				30,953.18
				\$89,675,098.45
Specific Devisees and Bequests as totaled above.....				55,783,794.00
				\$33,891,304.45
Deductions:				
Administration Expenses.....			\$370,646.56	
Debts of Decedent.....			8,816,531.34	
				9,187,177.90
Net Residuary Estate.....				\$24,704,126.55
		Amount	Rate	Tax
Of this Net Residuary Estate Helen Frick is entitled to 13/100ths or...		\$3,211,536.45	2%	\$64,230.73
[fol. 7a] While various educational and charitable institutions are entitled to 87/100ths or.....		21,492,590.10	5%	1,074,629.51
Tax on specific devises and bequests as above.....				\$1,925,247.61
Total Tax.....				\$3,064,107.85
Paid on Account.....				1,978,949.71
Balance due.....				\$1,085,158.14
With interest from Dec. 2, 1920, at the rate of 6% per annum				
Int. to July 2, 1922.....				103,090.02
				\$1,188,248.16

July 12, 1922.—Exceptions filed.

July 17, 1922.—Exceptions (2) to Decree filed.

Additional Exceptions by Helen C. Frick filed.

And now, to wit September 13th, 1922 the within additional exceptions to the adjudication and decree made in this case on July 7, 1922, being presented after notice thereof to the counsel for the Commonwealth of Pennsylvania, on motion of counsel for the expectant and upon consideration by the Court, it is ordered that the additional exceptions herein contained be filed.

Per Curiam.

Additional Exceptions by Adelaide H. C. Frick et al., Extrs. filed.

And now, to wit, September 13th, 1922 the within additional exceptions to the adjudication and decree made in this case on July 7,

1922 being presented, after notice thereof to counsel for the except-  
[fol. 8a] ants and upon consideration by the Court it is ordered that  
the additional exceptions herein contained be filed.

Per Curiam.

Notice to Counsel for Commonwealth of Pennsylvania filed.

And now, to wit, May 11, 1922 come Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, as Executors of the will of Henry C. Frick, and Helen C. Frick, one of the devisees and legatees of the residue of the Estate of the said Henry C. Frick, by George B. Gordon, their counsel and pray leave to amend the petition filed in the above entitled matter, in the following particulars.

1st. By amending Paragraph Fourth (a) so that the same shall read:

The appraisement is erroneous in including tangible personal property situated in the State of New York valued at thirteen million two hundred ten thousand, two hundred three and thirty-five hundredths dollars (\$13,210,203.35); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. That the imposition of a tax based upon such appraisement erroneously including tangible personal property situated within the State of New York, would deprive the estate and the residuary legatees of their property without due process of law, in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

[fol. 9a] 2nd. By amending Paragraph Fourth (b) so that the same shall read:

"The appraisement is erroneous in including tangible personal property situated in the State of Massachusetts valued at three hundred twenty-five thousand, four hundred thirty-four and twenty-five hundredths dollars (\$325,434.25); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. The imposition of a tax based upon such appraisement erroneously including tangible property situated within the State of Massachusetts would deprive this estate and the residuary legatees of their property without due process of law in violation of Sec. 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

3rd. By amending Paragraph Fourth (f) so that the same shall read:

"The appraisement is erroneous in not allowing as deductions from the gross value of the estate the debts of the decedent, the expenses of the administration of the estate, including attorneys' fees, taxes paid and to be paid on the estate, to the government of the United States and to other States and governments, funeral expenses, losses

occurring during the settlement of the estate and other deductions to be allowed in ascertaining the clear value of the estate; the exact amount of which items are not ascertainable at the present time. The imposition of a tax, based upon such appraisement, erroneously not allowing the said deductions, would deny to this estate and the residuary legatees the equal protection of the laws and would de-[fol. 10a] prive this estate and the residuary legatees of their property without due process of law in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, William Watson Smith, Executors of the Will of Henry C. Frick, Dec'd, and Helen C. Frick, By George B. Gordon, Their Attorney.

Affidavit filed.

Notice of acceptance filed.

And now, to wit May 11, 1922, the foregoing petition presented in open court and upon consideration thereof, the amendment is allowed as prayed for and ordered filed.

Per Curiam.

And now, to wit December 5, 1922, this matter came on to be heard by the Court in banc upon Exceptions to the decrees made in the above entitled cases, and was argued by Counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed the Exceptions be and the same are hereby dismissed and the said decrees are affirmed.

Per Curiam.

Opinion by Mitchell, J. for the Court in banc filed.

NOTE.—See No. 171 March Term, 1922.

And now, to wit December 13, 1922 the Commonwealth of Pennsylvania, Adelaide H. C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, Executors of the Last Will and Testament [fol. 11a] of Henry C. Frick, Deceased, and Helen C. Frick in her individual capacity except to the foregoing decree and at their instance exception allowed and bill sealed.

Per Curiam.

December 13, 1922.—Certiorari from Supreme Court on appeal of Commonwealth of Pennsylvania filed.

December 13, 1922.—Certiorari from Supreme Court on appeal of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased filed.

December 13, 1922.—Certiorari from Supreme Court on appeal of Helen C. Frick filed.

## IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

## PETITION AND ORDER

PETITION—Filed Dec. 27, 1920

To the Honorable the Judges of the said Court:

The petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, as Executors of the will of Henry C. Frick, and of Helen C. Frick, as one of the devisees and legatees of the residue of the estate of the said Henry C. Frick, respectfully represents:

First. Henry C. Frick died on December 2nd, 1919, a resident of Allegheny County, Pennsylvania, and his will, probated on December 6th, 1919, is recorded in the office of the Register of Wills of the said county in Will Book Vol. 160, page 6.

[fol. 12a] Second. William Conner, Register of Wills of the said county and Agent of the Commonwealth of Pennsylvania, caused an appraisement to be made, for transfer inheritance tax purposes, of the property of the estate of the said Henry C. Frick, in the sum of ninety-one million two hundred three thousand one hundred fifty-six and 77/100 dollars (\$91,203,156.77), which appraisement bears date the 26th day of November, 1920.

Third. Your petitioners have appealed from the said appraisement to your Honorable Court and have given notice of the appeal to the said William Conner, Register of Wills and Agent of the Commonwealth, and have given security to him, approved by your Honorable Court, to pay all costs, together with whatever tax shall be fixed by your Honorable Court, subject to the right of appeal to the Supreme or Superior Court of the Commonwealth.

Fourth. Among other grounds for the said appeal, the following are specifically assigned:

(a) The appraisement is erroneous in including tangible personal property situated in the State of New York valued at thirteen million two hundred ten thousand two hundred three and 35/100 dollars (\$13,210,203.35); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania.

(b) The appraisement is erroneous in including tangible personal property situated in the State of Massachusetts valued at three hundred twenty-five thousand four hundred thirty-four and 25/100 dollars (\$325,434.25); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania.

(c) The appraisement is erroneous in valuing the tangible personal property in Pennsylvania and the intangible personal property

[fol. 13a] wherever situated at sixty-one million five hundred twenty thousand four hundred seventy-two and 67/100 dollars (\$61,520,472.67); the said valuation being excessive in the following particulars:

1. One hundred twenty-nine shares of stock of the Duquesne National Bank, Pittsburgh, are appraised at \$200 per share, or \$25,800, whereas the true value of the said stock at the date of the decedent's death was only \$150 per share, or \$19,350.

2. A mortgage dated May 1st, 1914, made by Josiah V. Thompson to Henry C. Frick, in the amount of \$500,000, covering premises situate in the Eighth Ward, City of Pittsburgh, on the easterly side of South Highland Avenue, distant southwardly one hundred twenty-six and 55/100 (126.55) feet from the southerly side of Penn Avenue, having a frontage of ninety-eight and 47/100 (98.47) feet and an average depth of approximately one hundred and ten (110) feet, improved with a thirteen-story office building, known as the Highland Building, recorded in the Recorder's Office of Allegheny County, in Mortgage Book Vol. 1524, page 40, is appraised at \$500,000, whereas the true value of the said mortgage at the date of the decedent's death was only \$400,000.

(d) The appraisement is erroneous in valuing the real estate in Pennsylvania at sixteen million one hundred forty-seven thousand forty-six and 50/100 dollars (\$16,147,046.50); the said valuation being excessive in the following particulars:

1. A lot of ground situate in the First Ward, City of Pittsburgh, having a frontage of two hundred and forty (240) feet on Second Avenue and running back with uniform width between Short Street and Redoubt Alley one hundred sixty (160) feet to First Avenue, [fol. 14a] containing 38,350 square feet, is appraised at \$402,675, whereas the true value of the said property at the date of the decedent's death was only \$306,800.

2. A lot of ground situate in the Second Ward, City of Pittsburgh, having a frontage of two hundred and thirty-one (231) feet, more or less, on Grant Street and running back with uniform width between Fifth Avenue and Diamond Street one hundred (100) feet, more or less, to Scrip Alley having erected thereon a twenty-story office building, known as the Frick Building, is appraised at \$5,558,250, whereas the true value of the said property at the date of the decedent's death was only \$3,600,000.

3. A lot of ground situate in the Second Ward, City of Pittsburgh, having a frontage of one hundred and twenty (120) feet on Diamond Street and running back with uniform width between Cherry Alley and Scrip Alley ninety-five (95) feet, more or less, to Resort (formerly Relief) Alley, having erected thereon an eighteen-story office building, known as the Frick Building Annex, is appraised at \$1,650,000, whereas the true value of the said property at the date of the decedent's death was only \$1,400,000.



4. A lot of ground situate in the Second Ward, City of Pittsburgh, at the northeasterly corner of Grant Street and Oliver Avenue, having a frontage of ninety-three and  $47/100$  (93.47) feet, more or less, on Grant Street and running back eighty and  $59/100$  (80.59) feet, more or less, along Oliver Avenue, is appraised at \$377,000, whereas the true value of the said property at the date of the decedent's death was only \$301,600.

5. A lot of ground situate in the Second Ward, City of Pittsburgh, at the northwesterly corner of Grant Street and Sixth Avenue, having [fol. 15a] ing a frontage of one hundred (100) feet on Grant Street and running back eighty (80) feet along Sixth Avenue, is appraised at \$400,000, whereas the true value of the said property at the date of the decedent's death was only \$320,000.

6. A tract of land situate in the Fourth Ward, City of Pittsburgh, bounded by Forbes Street, Bellefield Avenue, Fifth Avenue and Bigelow Boulevard, containing 13.65 acres, more or less, is appraised at \$1,500,000, whereas the true value of the said property at the date of the decedent's death was only \$1,200,000.

7. A lot of ground situate in the Fourth Ward, City of Pittsburgh, beginning at the northeasterly corner of Bellefield Avenue and Forbes Street, thence eastwardly along Forbes Street, ninety-two (92) feet to Dithridge Street, thence northwardly along Dithridge Street three hundred and sixty-two (362) feet, more or less, to Fillmore Street, thence westwardly along Fillmore Street one hundred and eighty-two (182) feet to Bellefield Avenue, and thence southwardly along Bellefield Avenue three hundred and ninety-five (395) feet, more or less, to Forbes Street at the place of beginning, is appraised at \$194,649, whereas the true value of the said property at the date of the decedent's death was only \$155,000.

8. A lot of ground situate in the Fourth Ward, City of Pittsburgh, beginning at the northwesterly corner of Dithridge and Fillmore Streets, thence northwardly along Dithridge Street forty (40) feet, thence running back with uniform width to Fillmore Street one hundred and ninety-two (192) feet, more or less, to Bellefield Avenue, is appraised at \$22,380, whereas the true value of the said property at the date of the decedent's death was only \$20,000.

[fol. 16a] 9. A tract of land situate in the Fourteenth Ward, City of Pittsburgh, bounded on the north by Forbes Street and the Homewood Cemetery; on the east and south by land late of Frank Moore, Braddock Avenue, land now or late of J. Kountz, Milton Avenue, Henrietta Street, La Clair Street, land now or late of the Wilkins Estate, Overton Avenue, Lancaster Street, Hutchinson Avenue and Richmond Street; on the south and west by Sanders Avenue, land now or late of Mrs. M. McCombs and the Phillips Estate, and on the west by land now or late of Mrs. A. D. Shaw, Shaw Avenue and Beechwood Boulevard, continuing to the intersection of Beechwood Boulevard and Forbes Street, containing 151 acres, more or less, and having erected thereon two small frame houses, is appraised at

\$427,400, whereas the true value of the said property at the date of the decedent's death was only \$375,000.

10. A tract of land situate in the Borough of Turtle Creek beginning at the northeasterly corner of Grant Street and Sycamore Street, thence north  $1^{\circ} 24'$  east one hundred forty-one and  $79/100$  (141.79) feet to an angle in said street, thence north  $12^{\circ} 46' 30''$  east along Grant Street two hundred thirty-one and  $50/100$  (231.50) feet to Sarah Street, thence south  $89^{\circ} 42'$  east along Sarah Street one hundred five and  $22/100$  (105.22) feet to the prolongation of the easterly line of an alley ten (10) feet wide, thence north  $0^{\circ} 18'$  east along said prolongation of the easterly line of said alley and along said easterly line of said alley one hundred eighteen and  $51/100$  (118.51) feet to Maple Avenue, thence south  $89^{\circ} 42'$  east along Maple Avenue one hundred eighty-nine and  $13/100$  (189.13) feet to line of land of Mrs. J. M. Larimer, thence south  $1^{\circ} 7'$  west along said line of land of Mrs. J. M. Larimer four hundred one and  $29/100$  (401.29) feet to a post, thence south  $42^{\circ}$  [fol. 17a]  $36'$  west still along said line of land of Mrs. J. M. Larimer two hundred twenty-four and  $79/100$  (224.79) feet to Sycamore Street, and thence north  $66^{\circ} 34' 30''$  west along Sycamore Street two hundred six and  $51/100$  (206.51) feet to the place of beginning, having erected thereon a two-story frame house, is appraised at \$28,000, whereas the true value of the said property at the date of the decedent's death was only \$15,000.

11. An undivided six-twentieths interest in lots of ground situate in the Thirteenth Ward, City of Pittsburgh, being lots Nos. 1, 2, 3 and 9 to 16 inclusive and lots Nos. 391 to 397 inclusive in the Villa Place Plan and lot No. 436 in the Bank of Commerce Extended Plan, is appraised at \$7,250, whereas the true value of the said six-twentieths interest at the date of the decedent's death was only \$3,000.

(e) The appraisement is erroneous in including in the taxable real estate the tract of land described in paragraph Number 9 above, which passed by the will of the decedent to the City of Pittsburgh for the sole use of the public by way of free exhibition, and also in including in the taxable personal property the sum of Two million dollars (\$2,000,000) bequeathed to The Union Trust Company of Pittsburgh in trust as a fund for the maintenance of the ground so devised for the sole use of the public; the said property not being subject to any inheritance tax.

(f) The appraisement is erroneous in not allowing as deductions from the gross value of the estate the debts of the decedent, the expenses of the administration of the estate, including attorneys' fees, taxes paid and to be paid on the estate to the Government of the United States and to other States and governments, funeral expenses, losses occurring during the settlement of the estate, and other de-[fol. 18a] ductions to be allowed in ascertaining the clear value of the estate, the exact amounts of which items are not ascertainable at the present time.

Fifth. Your petitioners reserve the right to assign further grounds for the appeal with the same effect as if they were specifically assigned herein.

Wherefore, Your petitioners pray that your Honorable Court will sustain their appeal and determine all questions of valuation of the property of the estate of the said Henry C. Frick, deceased, and of the liability of the said estate for transfer inheritance tax, subject to the right of appeal to the Supreme or Superior Court of the Commonwealth.

And your petitioners will ever pray, etc.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, and William Watson Smith, Executors of the Will of Henry C. Frick, and Helen C. Frick, By George B. Gordon, Their Attorney.

[fol. 19a] COMMONWEALTH OF PENNSYLVANIA,  
County of Allegheny, ss:

Before me, a notary public in and for the Commonwealth and County aforesaid, personally came Henry C. McEldowney, who, being duly sworn according to law, says that he is one of the petitioners above named and that the allegations of fact set forth in the foregoing petition are true and correct as he is informed and believes and expects to be able to prove upon the trial of this cause.

Henry C. McEldowney.

Sworn to and subscribed before me this 27th day of December, A. D. 1920. William L. Church, Notary Public.  
(Seal.) My commission expires February 1st, 1921.

#### Order

And now, to-wit, December 27, 1920, the foregoing petition was presented in open court, and upon consideration thereof, a citation is issued to William Conner, Register of Wills of Allegheny County and Agent of the Commonwealth, to show cause why the appeal should not be sustained and the property of the estate of the said Henry C. Frick, deceased, appraised and its liability for transfer inheritance tax determined in accordance with the terms of the petition, returnable June 26, 1921.

Per Curiam.

[fol. 20a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

ANSWER—Filed Feb. 25, 1921

To the Honorable the Judges of the said Court:

The Respondent, William Conner, Register of Wills and Agent for the Commonwealth of Pennsylvania, for answer to the Petition

of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, as Executors of the last Will and Testament of Henry C. Frick, deceased, and of Helen C. Frick as one of the devisees and legatees of the residue of the estate of the said Henry C. Frick, appealing from the appraisement of the estate of the said Henry C. Frick, deceased, made and returned by the Appraisers of said estate, duly appointed by the Recorder of Wills in and for the County of Allegheny, respectfully sheweth:

First. That the averments of the first paragraph of said Petition are admitted.

Second. That the averments of the second paragraph of said Petition are admitted.

Third. That the averments of the third paragraph of said Petition are admitted.

Fourth. For answer to the fourth paragraph of said Petition the respondent avers:

(a) That the inclusion in the appraisement of the tangible personal property situate in the State of New York is in accordance with the Act of Assembly in such case made and provided: such property being liable for transfer inheritance tax under the Act of June 20, 1919, P. L. 521.

[fol. 21a] (b) That the inclusion in the appraisement of the tangible personal property situate in the State of Massachusetts is in accordance with the Act of Assembly in such case made and provided; such property being liable for transfer inheritance tax under the Act of June 20, 1919, P. L. 521.

(c) That the appraised value of the tangible personal property in Pennsylvania and the intangible personal property wherever situate, to-wit: \$61,520,472.67, is the true and fair value thereof and was the true and fair value thereof at the date of the death of the said Henry C. Frick. Respondent specifically avers that at the present time and at the time of the death of the said Henry C. Frick the shares of stock of the Duquesne National Bank of Pittsburgh mentioned in the Petition are and were fairly and truly worth at least \$200.00 per share as appraised, and the mortgage of Josiah V. Thompson mentioned in the Petition is and was fairly and truly worth at least \$500,000 as appraised.

(d) That the real estate in Pennsylvania is now and was at the date of the death of the said Henry C. Frick fairly and truly worth at least \$16,147,046.50, and respondent specifically avers that at the present time and at the time of the death of the said Henry C. Frick the lot of ground mentioned in Paragraph Fourth (d) 1. of the Petition was worth at least \$402,675, and the lot of ground mentioned in Paragraph Fourth (d) 2. of the Petition was worth at least \$5,558,250, and the lot of ground mentioned in Paragraph Fourth (d) 3. of the Petition was worth at least \$1,650,000, and the lot of ground

mentioned in Paragraph Fourth (d) 4. of the Petition was worth at least \$377,000, and the lot of ground mentioned in Paragraph Fourth (d) 5. of the Petition was worth at least \$400,000, and the [fol. 22a] tract of land mentioned in Paragraph Fourth (d) 6. of the Petition was worth at least \$1,500,000, and the lot of ground mentioned in Paragraph Fourth (d) 7. of the Petition was worth at least \$194,649, and the lot of ground mentioned in Paragraph Fourth (d) 8. of the Petition was worth at least \$22,380, and the tract of land mentioned in Paragraph Fourth (d) 9. of the Petition was worth at least \$427,400, and the tract of land mentioned in Paragraph Fourth (d) 10. of the Petition was worth at least \$28,000, and the undivided six-twentieths interests in the lots of ground mentioned in Paragraph Fourth (d) 11. of the Petition was worth at least \$7,250.

(e) Respondent is advised by counsel that the property described in Paragraph Fourth (d) 9. of the Petition, which was devised by the said Henry C. Frick to the City of Pittsburgh as a public park free to the people, is exempted from taxation by the Act of July 9, 1919, P. L. 794, but as to the validity of such exemption respondent submits himself to the judgment of the Court. Respondent denies that the sum of \$2,000,000 bequeathed to The Union Trust Company of Pittsburgh in trust as a fund for the maintenance of such property is in any way exempted from any such taxation.

(f) Respondent avers that in the calculation of the tax payable to the Commonwealth in this case there will be allowed as deductions from the gross value of the estate of the decedent the debts of the decedent and the expenses of the administration of the estate, and alleges that no other deductions can legally be allowed to the petitioners.

Fifth. Respondent denies the right of petitioners to assign further grounds of appeal and denies the authority or right of the petitioners [fol. 23a] to "reserve" any such "right" or privilege.

The Respondent therefore prays the Court to dismiss the appeal at the costs of the Petitioner.

And he will ever pray, etc.

William Conner, By George E. Alter, Attorney General of Pennsylvania. David A. Reed, Attorney for the Commonwealth, pro haec vice.

COMMONWEALTH OF PENNSYLVANIA,  
County of Allegheny, ss:

Before me, the undersigned authority, a Notary Public in and for said County and Commonwealth, personally appeared William Conner, who, being by me duly sworn, deposes and says that the statements contained in the foregoing Answer are true and correct, as he verily believes.

Wm. Conner.

Sworn to and subscribed before me this 25th day of February,  
A. D., 1921. John F. Lowers, Notary Public. (Seal.)  
My commission expires, end next Session of Senate.

[fol. 24a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

STIPULATION AND ORDER

STIPULATION—Filed Dec. 1, 1921

And now, December 1, 1921, the parties stipulate that with the permission of the Court, the questions involved in Clauses "C" and "D" of the Fourth Paragraph of the Petition of the Executors of the Will of Henry C. Frick, Deceased, and of Helen C. Frick shall be disposed of as follows:

Clause "C"

1. (a) The appeal shall be sustained in its claim that 129 shares of stock of the Duquesne National Bank should have been appraised at \$19,350.00.

(b) The appeal shall be overruled and dismissed in its claim respecting the mortgage of Josiah V. Thompson, and the valuation of \$500,000 shall be confirmed.

(c) The item "Agreement for sale of real estate," appearing on page 15 of the Appraisement and not specifically mentioned in said petition, shall be increased from \$2,200,000 to \$2,260,044.

Clause "D"

2. The questions raised by clause "D" of the fourth paragraph of said petition shall be disposed of as follows:

(a) Items 2 and 3, Frick Building and Frick Building Annex, shall in the aggregate be valued at \$5,900,000.

(b) All other real estate in Pennsylvania shall be valued in an aggregate at \$8,585,380.

[fol. 25a] 3. As modified by this stipulation, the valuations made in said Appraisement are to be confirmed by the court, so that the totals thereof are as follows:

Total of tangible personal property and real estate in the State of Pennsylvania and intangible personal property of the testator.....	\$76,059,446.67
Total of tangible personal property in the State of New York .....	13,210,203.35
Total of tangible personal property in the State of Massachusetts .....	325,434.25
Grand Total .....	\$89,595,084.27

4. Nothing in this stipulation is to be construed as a waiver or compromise of any question of law raised by said petition, the purpose of this stipulation being only to dispose of disputed matters of valuation.

Geo. E. Alter, Attorney General. David A. Reed, For the Commonwealth. Geo. B. Gordon, Miles H. England, For Helen C. Frick, Individually, and Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, and William Watson Smith, Executors of the Will of H. C. Frick, Deceased.

### Order

And now, Dec. 1, 1921, the within stipulation presented in open court, approved and ordered to be filed.

Per Curiam.

[fol. 26a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

### STIPULATION AND ORDER AS TO ADMINISTRATION EXPENSES, DEBTS, AND TAXES

It is stipulated and agreed that the following shall be taken for the purposes of this case to be a correct statement of facts:

(1) The administration expenses paid to December 3, 1921, amount to \$370,646.56.

(2) The debts of the decedent paid to December 3, 1921, amount to \$8,816,531.34.

There are approximately \$750,000 of claims against the decedent which have been brought to the attention of the Executors and which have not been settled. In the judgment of the Executors these claims are valid to the extent of about \$175,000, but the Executors have no means of knowing to what extent they will be allowed by the courts. There are also contingent liabilities amounting to \$3,386,077.49. How much of this will have to be paid the Executors have no means of ascertaining at the present time.

Out of the total amount of debts actually paid of \$8,816,531.34 hereinbefore mentioned, the sum of \$5,602,145.49 was due and owing to citizens and residents of the State of New York.

(3) The Executors have paid a Federal Inheritance Tax upon this estate amounting to \$6,338,898.68. This was the amount of Federal Inheritance Tax as calculated by the Executors, and there has been no tax assessed by the Commissioner of Internal Revenue of the United States, and the Executors have no knowledge as to whether the amount of tax as finally assessed or liquidated will or will not exceed this amount.

There have been final assessments of the inheritance taxes in seventeen states and in the Province of Quebec, in so far as any such



[fol. 27a] assessments are a finality. The statutes in nearly all the states, however, provide for the re-opening of the proceedings in case of any omitted items of taxable property. Said assessments have been paid by the Executors as follows:

West Virginia .....	\$329,925.00
Kansas .....	353,887.04
Wisconsin .....	117,023.44
Illinois .....	20,140.88
Michigan .....	9,368.38
Massachusetts .....	38,300.30
Oklahoma .....	10,000.00
Minnesota .....	960.41
Ohio .....	29,433.77
Kentucky .....	9,743.79
Indiana .....	23,692.51
Maine .....	2,855.37
Colorado .....	2.25
New Jersey .....	7,919.25
Utah .....	64.27
South Dakota .....	22.76
Wyoming .....	000.00
Providence of Quebec .....	120.00
Total .....	\$1,084,459.42

There is a proceeding now pending in New York for the ascertainment of the New York inheritance tax, which has not been decided. The Executors have made a tentative payment of \$131,000 on account of the New York taxes, but the Comptroller of the State of New York is claiming that a very much larger sum than this is due.

There is a possibility that there is an inheritance tax due the States [fol. 28a] of Missouri and Texas and the Province of Ontario, but nothing has been done with reference to either an ascertainment of the amount or looking to an adjudication of liability.

(4) The Executors have paid the Register of Wills \$1,978,949.71 on account of inheritance taxes due the Commonwealth of Pennsylvania.

(5) The various sums of money mentioned in this stipulation are taken from the records of the Executors and are subject to correction at any time by either party on discovery of error or omission.

David A. Reed, For the Commonwealth. Geo. B. Gordon,  
For Appellants.

#### ORDER

And now, February 2nd, 1922, the within Stipulation presented in open court, approved and ordered to be filed as part of the record in this case.

Per Curiam.



## IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

STIPULATION AND ORDER AS TO THAT PORTION OF THE TANGIBLE PERSONAL PROPERTY LOCATED IN THE CITY OF NEW YORK KNOWN AND REFERRED TO IN THE INVENTORY AS "THE FRICK COLLECTION," AND WHICH IS APPRAISED IN THE INVENTORY AT THE AGGREGATE AMOUNT OF \$13,132,391

It is stipulated and agreed that the following shall be taken, for the purposes of this case, to be a correct statement of the facts with reference to said property:

[fol. 29a] This property was at the time of Mr. Frick's death located in the City of New York in a building occupied by him at that time as one of his residences. The ground and building were devised by Mr. Frick in Article IV of his will, to which reference is hereby made. In said will the testator's widow was given the right to occupy said premises as long as she desired to do so as one of her residences. Subject to said right of Mrs. Frick, the land and building were devised to a corporation, to be formed in the State of New York and to be known as "The Frick Collection." Said corporation has been incorporated by a special statute of the State of New York and has accepted the said devise. By Section 3 of Article IV of the will, all the works of art contained in said building at the time of Mr. Frick's death were bequeathed to certain persons as trustees, to hold the same until the incorporation of "The Frick Collection," and upon that incorporation to assign and transfer the same to the corporation, and this has been done. This collection has remained continuously since Mr. Frick's death, and now is, in said building, which is still occupied by Mrs. Frick as one of her residences.

The real estate referred to is a piece of ground fronting on Fifth Avenue in the City of New York, bounded on the south by Seventieth Street and on the north by Seventy-first Street, opposite Central Park. It had been for many years prior to Mr. Frick's purchase, in the year 1907, occupied by the New York Public Library. At the time of Mr. Frick's purchase of the property he owned a great many art treasures. He employed Carrere & Hastings, architects of New York, to draw up plans for a building. The construction of the building was begun in the year 1912 and completed and first occupied by Mr. Frick in the fall of 1914.

In this building, upon its completion, Mr. Frick installed by far the greater part of the objects of art which he then owned. This [fol. 30a] collection, at that time, consisted largely of paintings. Mr. Frick continued from the time of the completion of the building until the time of his death to acquire paintings, rugs, furniture, bronzes, porcelains, etc. These works of art were largely antiques and of European and Asiatic origin and before their purchase by Mr. Frick had passed through the ownership of many successive persons and had often been moved from place to place in Europe, Asia and America. Up to the time of his death it continued to be Mr. Frick's practice to sell or exchange works of art which he owned, usually re-

placing them with others that he considered more desirable. In or about the year 1915 Mr. Frick purchased a celebrated series of paintings or panels which were begun by Jean-Honore Fragonard in France in the year 1772 for Louis XV and which consist of five large or principal panels and nine minor panels. After acquiring them, the room in which they were placed was reconstructed and is now known as the Fragonard Room. This room was reconstructed so as to contain said panels and they were placed therein and are now there, being applied to the walls of the room. These panels are valued in the inventory at \$750,000. In the same way, a room on the second floor was reconstructed and had applied on its walls a set of ten panels by Francois Boucher, which are appraised in the inventory at \$150,000.

None of the articles included in this portion of the inventory has been in the State of Pennsylvania at any time since the New York building referred to was finished.

David A. Reed, For the Commonwealth. Geo. B. Gordon,  
Attorney for Appellants.

Per Curiam.

[fol. 31a]

#### ORDER

And now, February 2nd, 1922, the within Stipulation presented in open court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

#### IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

#### STIPULATION AND ORDER AS TO THE TANGIBLE PERSONAL PROPERTY LOCATED IN THE STATES OF NEW YORK AND MASSACHUSETTS OTHER THAN THE FRICK COLLECTION

It is stipulated and agreed that the following shall be taken, for the purposes of this case, to be a correct statement of the facts with reference to said property:

##### (a) New York:

These articles consist of furniture et cetera of the inventory value of \$62,334.90 and household supplies, jewelry and wearing apparel of the value of \$4,583, all located at the time of Mr. Frick's death in his New York house, and automobiles, tools, liveries, etc., in Mr. Frick's New York garage of the value of \$10,900.85.

##### (b) Massachusetts:

These articles consist of paintings, objects of art, furniture and furnishings, books and household supplies contained in Mr. Frick's house at Prides Crossing of the inventory value of \$318,429.25, and the contents of the garage, cottage and stable, farming implements,

etc., all of which were on the estate at Prides Crossing at the time of Mr. Frick's death, of the inventory value of \$7,105.

None of these articles have been in the State of Pennsylvania since the Prides Crossing house was built in 1905 and most of them were [fol. 32a] never in the State of Pennsylvania.

The articles contained both in the New York house and garage and the Prides Crossing house, garage and farm consisted of nothing more than the ordinary furniture and furnishings suitable for such residences and estate.

David A. Reed, For the Commonwealth. Geo. B. Gordon,  
Attorney for Appellants.

#### ORDER

And now, February 2nd, 1922, the within Stipulation presented in open court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

#### IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

#### STIPULATION AND ORDER

It is stipulated and agreed that on the trial of this appeal and in all proceedings connected therewith, all statutes and decisions of all of the States of the United States and of the Provinces of Quebec and Ontario shall be taken to be in evidence and that the Court may judicially notice any such statutes or decisions that may be called to its attention by either party.

In compilation of any record on appeal or other transcript of the proceedings, only such statutes or decisions shall be printed as shall be designated by either party.

[fols. 33a-35a] The right of appeal from any decision in this matter is specifically reserved to both parties, notwithstanding this or any other stipulations that the parties may make as to the facts.

David A. Reed, For the Commonwealth. Geo. B. Gordon,  
For the Appellant.

#### ORDER

And now, February 2nd, 1922, the within Stipulation presented in open court, approved and ordered to be filed as part of the record in this case.

Per Curiam.

## [fol. 36a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

## AMENDMENT TO PETITION—Filed May 11, 1922

And now, to wit, May 11th, 1922, come Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, as Executors of the will of Henry C. Frick, and Helen C. Frick, one of the devisees and legatees of the residue of the Estate of the said Henry C. Frick, by George B. Gordon, their counsel, and pray leave to amend the petition filed in the above entitled matter in the following particulars:

First. By amending Paragraph Fourth (a) so that the same shall read:

"The appraisement is erroneous in including tangible personal property situated in the State of New York valued at thirteen million, two hundred ten thousand, two hundred three and thirty-five hundredths dollars (\$13,210,203.35); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. The imposition of a tax based upon such appraisement, erroneously including tangible personal property situated within the State of New York, would deprive the estate and the residuary legatees of their property without due process of law, in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States."

Second. By amending Paragraph Fourth (b) so that the same shall read:

"The appraisement is erroneous in including tangible personal property situated in the State of Massachusetts valued at three hundred twenty-five thousand, four hundred thirty-four and twenty-five hundredths dollars (\$325,434.25); the said property not being liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. The imposition of a tax, based [fol. 37a] upon such appraisement, erroneously including tangible property situated within the State of Massachusetts would deprive this estate and the residuary legatees of their property without due process of law in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States."

Third. By amending Paragraph Fourth (f) so that the same shall read:

"The appraisement is erroneous in not allowing as deductions from the gross value of the estate the debts of the decedent, the expenses of the administration of the estate, including attorneys' fees, taxes paid and to be paid on the estate to the Government of the United States and to other states and governments, funeral expenses, losses occurring during the settlement of the estate and other deductions to be allowed in ascertaining the clear value of the estate; the exact amount of which items are not ascertainable at the present time. The imposition of a tax based upon such appraisement erro-

neously not allowing the said deductions, would deny to this estate and the residuary legatees the equal protection of the laws and would deprive this estate and the residuary legatees of their property without due process of law in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States."

And your petitioner will ever pray, etc.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, William Watson Smith, Executor of the Will of Henry C. Frick, Deceased, and Helen C. Frick, By George B. Gordon, Their Attorney.

[fol. 38a] COMMONWEALTH OF PENNSYLVANIA,  
County of Allegheny, ss:

Before me, a Notary Public in and for the Commonwealth and County aforesaid, personally came William Watson Smith, who being duly sworn according to law, says that he is one of the beneficiaries above named, and that the allegations set forth in the foregoing petition are true and correct, as he is informed and believes and expects to be able to prove upon the trial of this cause.

William Watson Smith.

Sworn to and subscribed before me this 11th day of May, 1922. Clara I. Houston, Notary Public. (Seal.) My Commission expires January 22, 1925.

### Order

And now, to-wit May 11, 1922, the foregoing petition presented in open court and upon consideration thereof, the amendment is allowed as prayed for and ordered filed.

Per Curiam.

### Notice

Notice of the intended presentation of the within petition is acknowledged.

David A. Reed, For the Commonwealth. May 11, 1922.

[fol. 39a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

OPINION—Filed July 7, 1922

MITCHELL, J.:

There are several questions raised by this appeal.

First. Can the State of Pennsylvania collect an inheritance tax on the value of the tangible personal property of the decedent which at his death was located without this Commonwealth?

This property consisting of works of art, paintings, furniture, books, automobiles, etc., was in the States of New York and Massachusetts. That in the former State is of the value of \$13,210,209.75, and that in the latter State of the value of \$325,534.25. The largest part of the New York personalty consists of paintings, objects of

art, etc., of the value of \$13,132,391.00 which under the will of the decedent will go to a corporation to be formed under the laws of the State of New York and be known as "The Frick Collection," for the purpose of establishing and maintaining an art gallery.

The Act of June 20th, 1919, P. L. 521, provides that a tax shall be imposed upon the transfer of any property, real or personal, from any person dying seized or possessed of the property while a resident of this Commonwealth and whether the property be situated in the Commonwealth or elsewhere. The tax imposed is at the rate of two percent on the property passing to the wife and children, and at the rate of five per cent. on the value of the property passing to the municipal corporation of the City of New York.

It is a familiar principle that personal property, wherever it may be situated, descends according to the law of the decedent's domicile. It is admitted by counsel that this Commonwealth may not [fol. 40a] impose a tax upon tangible personal property outside of the State; *Commonwealth v. Standard Oil Company*, 101 Pa. 119; *Commonwealth v. Railroad Company*, 145 Pa. 103; *Dupuy v. Johns et al.*, 261 Pa. 45.

Is the tax sought to be imposed a tax upon the property? It is very generally held in the different States that an inheritance tax is not a property tax. In construing the Act of May 6, 1887, P. L. 79, in *Finnen's Est.*, 196 Pa. 72, Mr. Chief Justice Green said, " \* \* \* The tax must be retained by the person who has the decedent's property in charge. It is, therefore, not a tax upon the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will or other conveyance, and hence that which the legatee really receives is not taxed at all. It is that which is left after the tax has been taken off", and quoting from the case of *Strode v. Commonwealth*, 52 Pa. 181, "Now this is not to be viewed as a tax assessed upon the estate of the decedent or of any one, but a restriction upon the right of acquisition by those who under the law regulating the transmission of property are entitled to take as beneficiaries without consideration. The State is made one of the beneficiaries. It lays its hands upon estates under such circumstances, and claims a share, and whether the share is exacted as a tax or duty or whatever else, or the machinery employed in levying an ordinary tax is adopted or not, it is of no consequence. \* \* \* Woodward, C. J. delivering the opinion of this Court said, 'The law takes every decedent's estate into custody, and administers it for the benefit of creditors, legatees, devisees and heirs, and delivers the residue that remains after discharging all obligations to the distributees entitled to receive it.' \* \* \* Now this five per cent. tax is one of the conditions of administration, and to [fol. 41a] deny the right of the State to impose it, is to deny the right of the State to regulate the administration of decedent's goods. \* \* \* The Act operates on the residue of the estate after paying debts and charges, and theoretically, that residue is always a balance in money."

"The tax does not attach to the very articles of property of which the deceased died possessed. \* \* \* It is on the net succession

to the beneficiaries and not on the securities in which the estate of the decedent was invested;" *Orcutt's Appeal*, 97 Pa. at page 185.

The Supreme Court speaking through Mr. Justice Mestrezat, in *Jackson, et al. v. Myers, Guardian*, 276 Pa., at page 108, holds "The state becomes a preferred beneficiary under the Act imposing the tax, and it is entitled to its share of the estate before the claims of heirs or devisees can be recognized or satisfied. The latter take only such part of the decedent's estate as remains after the payment of the tax, which is not levied upon the inheritance or the legacy, but, as already observed, upon the estate of the decedent. What passes to the heir or devisee, and to which he acquires title, is the portion of the estate remaining after the payment and satisfaction of the collateral tax." The decision in this case follows the leading cases of *Strode v. Commonwealth*, *Supra*, and *Finnen's Estate*, *Supra*. The opinion of Chief Justice Green in the latter case is quoted with approval.

The Act of 1919, under which this question arises, imposes a tax upon the transfer of any property. The very wording of the Act shows an intention not to tax the property. It is only when the estate passes to the devisee or legatee that the tax attaches itself, and from that act or circumstance of transference or passage results the duties prescribed in the Act for the beneficiaries and officials who [fol. 42a] look after the collection of the tax. While the maxim *mobilia sequuntur personam* is not a rigid principle when considerations of convenience and the facts make it necessary to disregard its application, yet its force is recognized and is sometimes required to be applied; *Hostetter's Estate*, 267 Pa. 196. The law of the domicile controls the succession of property. This particular personality was subject to the control of the testator. Some pieces and objects were moved from time to time. It might have been, had the testator lived longer, that much of the property would have been found in other places than where it was at the time of his death. While the property may have had a situs at its location, its devolution was determined by the law of the domicile and so follows the person of the testator.

"To come closer to the point, no one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession from the law of the domicil, or that by the law of the domicil the chattel is part of the universitas and is taken into account again in the succession there. No doubt this power on the part of two States to tax on different and more or less inconsistent principles, leads to some hardship. It may be regretted, also, that one and the same State should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in successions after death, *mobilia sequuntur personam* and domicil governs the whole. But these inconsistencies infringe no rule of constitutional law;" *Blackstone v. Miller*, 188 U. S. Reports, 189.



[fol. 43a] "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicile as determining the succession, it may be said that, in a practical sense at least, the law of the domicile is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicile, whatever the limitations of power over the specific chattels may be, as is especially plain in the case of contracts and stock;" *Bullen v. Wisconsin*, 240 U. S. Reports, 625.

The inheritance of estates is authorized and regulated by law. The statutes of the Commonwealth direct who shall take and in what proportion. There is no right apart from this law which allows one to take property on the death of an owner. The descent is controlled by the law of the domicile. Why then should not the State provide by legislation on what terms one may succeed to property and how this succession or passing is to be established? These taxes have never been laid because of the ownership by a decedent, but rather on the happening of death the taxing power steps in to exact a contribution on what passes by that death to the succeeding owner. If the tax were because of ownership it would be properly considered as imposed on the property. This, however, is not the case. The possession of the former owner ceased at his death, and for the privilege of acquiring the property by another a tax is levied by the State. The property of the successor is not taxed; his interest is what remains after the payment of the duty or tax which the State takes as its own before the transmission is allowed.

The Legislature in passing the Transfer Tax Act of June 20, 1919, we presume had in mind the decisions of our Supreme Court in the cases above quoted. This statute by its language and purpose im-[fol. 44a] posed a tax on the transfer and passing of the property and in this respect is not different from the statute in force at the time of these decisions. "The word 'transfer' as used in this Act (the Transfer Act of June 20, 1919), shall be taken to include the passing of property \* \* \*," and it is on this transfer or passing that the tax is imposed. The Act is in line with the legislation of other States where it has been construed that such a tax is not a direct tax but a tax on property. It is a tax on the taking or receipt of property by a beneficiary.

In a very full consideration of the subject of inheritance tax in the case of *Knowlton v. Moore*, 178 U. S. Reports, at page 55, Mr. Justice White said, "Thus, looking over the whole field, and considering death duties in the order in which we have reviewed them, that is, in the Roman and ancient law, in that of modern France, Germany and other continental countries, in England and those of her colonies where such laws, have been enacted, in the legislation of the United States and the several States of the Union, the following appears: Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their



essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested. \* \* \* (p. 58). All Courts and all governments, however, as we have already shown, concede that the transmission of property as such, is, nevertheless, a usual subject of taxation. \* \* \*."

[fol. 45a] In our view of the question the tax should be imposed in respect to this property located in other States than Pennsylvania.

The second question raised is, should not the State of Pennsylvania deduct the amount of Federal tax paid by this estate before fixing the amount due the Commonwealth for transfer inheritance tax under the Act of June 20, 1919, or, as stated by counsel for the estate, no tax is due to the State of Pennsylvania upon the amount of succession or inheritance taxes which have been paid to the United States Government?

The Supreme Court has recently decided in *Kirkpatrick's Estate* No. 107 October Term, 1922, to be reported, that the amount of tax paid the Federal Government cannot be deducted in fixing the inheritance tax due the Commonwealth. We accordingly so decide here, and this conclusion makes it necessary to decide that there shall not be any deduction for taxes paid in any other jurisdiction.

The third question: Is the Commonwealth entitled to a collateral inheritance tax on the value of a tract of land situated in the Fourteenth Ward of the City of Pittsburgh, devised by the testator to said City. Under Article V of the will testator devised this land comprising about one hundred fifty-one acres to the City of Pittsburgh and its successors forever as a public park free to the people, subject only to such reasonable regulations as said City may make with reference to the use thereof.

It is claimed that this devise is exempted from the tax under the provisions of the Act of Assembly of July 9, 1919, P. L. 794, Sec. 1 of which reads as follows: "Be it enacted &c. \* \* \* That all estates in any buildings, ground, books, curios, pictures, statuary [fol. 46a] or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation, or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." This devise is an estate in ground; it passes by will to a municipality for the sole use of the public within this State, and it is to be used by way of free exhibition.

Exhibition is defined as the act of exhibiting or displaying for inspection; a public show or display as of natural or artificial productions; *Century Dictionary*. That which is exhibited, held forth, or displayed; any public show; *Webster's New International Dictionary*. The action of exhibiting, submitting for inspection, displaying or holding up to view; *Murray's Dictionary*.

"Public parks have come to be recognized as not only the natural place for walks and drives afoot, on wheel or with horse and carriage, for boating, skating and other outdoor athletics, but also as the appropriate and most effective location for monuments and statues, either to historic heroes or to pure art, fountains, flower displays, botanical and zoological gardens, museums of nature and works of art, galleries of painting and sculpture, music stands and music halls, and all other agencies of aesthetic enjoyment of eye and ear. The parks of cultivated Europe are filled with works of art, and the great cities of this country are following fast in the same direction. Schenley Park in Pittsburgh with which this case is immediately concerned, already devotes a portion of its space, as found by the court below, to the Phipps Conservatory of flowers, to music stands and [fol. 47a] to the Carnegie Free Library building, as well as to athletic grounds and a race course. The Carnegie Free Library building, as also found by the court below, contains a free library, an art gallery, museum and music hall, all free to the public"; Laird, Appellant, v. Pittsburgh, 205 Pa. at page 6.

A park may for the edification and delight of the people display specimens of plant and animal life. It may exhibit worthy works of science and art. In fact many city parks have museums and gardens for just such purposes. These parks afford the public the means of physical culture and pleasant diversion. Also, they give the opportunity for acquiring information and knowledge. The modern park is so well maintained and its attractions so manifold and varied that its exhibitions of nature and art, its agencies for pleasure and sport entertain, instruct and recreate all classes in a community. A proper interpretation of this provision of the will brings this devise within the terms of the statute, and it is not subject to a tax in passing to the City of Pittsburgh.

The fourth question presented is, the liability for collateral inheritance tax of the endowment of two million dollars bequeathed by the testator for the maintenance of the said park.

In the second paragraph of Article V of the will the testator gives to the Union Trust Company of Pittsburgh as trustee two million dollars in trust to invest and apply the income therefrom after paying expenses of the trust "to maintaining, improving, embellishing, and adding to the said park and keeping the same in proper condition."

The fact that this fund is given to a trustee and not direct to the City makes no difference. It is for the purpose of completing the gift [fol. 48a] of the land, to effectuate the purpose of the testator, to make useful and practical for the public use this land, and to assure to the people an attractive and well kept park for open-air recreation and instruction. The money is to be used in improving and ornamenting the place, in supplying comforts and conveniences for visitors, in bringing in works of nature and objects of art which we think of in connection with a well kept park intended to promote the culture and happiness of those who frequent it. These improvements must be maintained and added to and perhaps additional

land acquired. All these things were in the mind of the testator as related to the gift of the land and were part of his plan of beneficence. He was giving the land, and in the same article of the will sets aside this fund for its maintenance. He was establishing a park and was taking care that it should not become a jungle. It would be a narrow construction of the Act to allow a tax in respect to this fund while exempting the gift of the land from the transfer tax. To tax this fund would not only defeat the intention of the testator, but would be contrary to the spirit of the Act, and at the same time add to the burdens of the people, who would be taxed to support the park.

We therefore hold that this fund is not liable to the payment of collateral inheritance tax.

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[fols. 49a & 50a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

DECREE

And now, to-wit July 7th, 1922, this matter came on to be heard upon petition and appeal from the appraisement and assessment of Transfer Inheritance Tax, answer thereto, testimony taken and stipulations filed, and was argued by counsel and upon consideration thereof it is ordered, adjudged and decreed the appeal be sustained in part and dismissed in part as shown by the calculation as to amount of Tax hereto attached and made part hereof.

Per Curiam.

Opinion by Mitchell, J.

See page 4 a Consolidated Record for Computation of tax.

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[fol. 51a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

EXCEPTIONS BY HELEN C. FRICK, ONE OF THE RESIDUARY LEGATEES UNDER THE LAST WILL AND TESTAMENT OF HENRY C. FRICK, DECEASED, TO THE ADJUDICATION AND DECREE OF JULY 7, 1922—  
Filed July 17, 1922.

And now, to-wit, July 17th, 1922, comes Helen C. Frick, one of the residuary legatees under the last will and testament of Henry C. Frick, deceased, and files the following exceptions to the decree and adjudication made in this case on July 7, 1922:

First. To the decree of the court in this case, which decree is as follows:

"And now, to-wit July 7th, 1922, this matter came on to be heard upon petition and appeal from the appraisement and assessment of Transfer Inheritance Tax, answer thereto, testimony taken and stipulations filed, and was argued by counsel, and upon considera-

tion thereof it is ordered, adjudged and decreed the appeal be sustained in part and dismissed in part as shown by the calculation as to the amount of Tax hereto attached and made part hereof.

Per Curiam.

See page 4 a Consolidated Record for computation of tax.

The grounds upon which said exception is founded are as follows:

(a) In said appraisal is erroneously included the valuation of certain tangible property outside of the State of Pennsylvania which the State of Pennsylvania has no authority to tax, and that the im-[fol. 52a] position of a tax liability thereon deprives the estate and the residuary legatees of their property without due process of law and also of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States; (b) That said decree fails to make proper deductions from the gross value of the estate for debts and administration expenses; (c) That said decree fails to make proper deductions from the gross value of the estate for inheritance or estate taxes paid the state of Pennsylvania, the United States Government and the governments of other states and jurisdictions, and that the imposition of a tax liability without making said deductions deprives the estate and the residuary legatees of their property without due process of law and, also, of their equal protection of the laws, in violation of Section I of the Fourteenth Article of the Amendment to the Constitution of the United States; (d) That this decree is premature for the reason that it is impossible to liquidate at the present time either the amount of said tax liability or to determine the taxable value of the estate or the amount of liability for inheritance tax.

Second. To including in the appraisal of the estate and imposing a liability for taxation upon tangible articles of personal property located at the time of Mr. Frick's death in the States of New York and Massachusetts, which were bequeathed to Mrs. Frick, and which have an appraised value of \$403,353, and upon which a tax liability is imposed in the sum of \$8,067.06.

The grounds upon which said exception is founded are as follows: Said tangible personal property of the value of \$403,353, so bequeathed to Mrs. Frick, is not liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. The imposition of this tax liability, based upon an appraisal [fol. 53a] erroneously including the tangible personal property situated within the States of New York and Massachusetts, will deprive the estate and the residuary legatees of their property without due process of law, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Third. To including in the appraisal of the estate and imposing a liability for taxation upon tangible articles of personal property located in the State of New York bequeathed under Mr. Frick's will to the "Frick Collection," said articles being of the appraised value of

\$13,132,391, upon which a tax liability is imposed in the amount of \$656,619.55.

The grounds upon which said exception is founded are as follows: Said amount of \$656,619.55 is a tax upon the appraised value of tangible articles of personal property bequeathed under Mr. Frick's will to the "Frick Collection," a New York corporation, all of which articles were located at the time of Mr. Frick's death in the State of New York. The State of Pennsylvania has no power to impose a tax liability for transfer inheritance tax on said property, and the imposition of a Pennsylvania inheritance tax liability based upon an appraisement erroneously including said property deprives the estate and the residuary legatees of their property without due process of law, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Fourth. To the determination at the present time of the taxable value of the estate or the ascertaining of the tax liability therefor.

The ground upon which this exception is founded is that no final account has been filed and there never has been any distribution [fol. 54a] made to the residuary legatees and it is impossible to tell what the amount of the residuary estate will ultimately be or what the tax liability will be thereon.

Fifth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate, in which no proper deduction was made from the estimated value of the gross estate for administration expenses.

The ground upon which this exception is founded is that in arriving at the estimated net residuary estate proper deduction was not made from the estimated gross value of the estate for administration expenses. A deduction was made only of the administration expenses accruing to December 31, 1921, whereas there will be additional administration expenses, the amount of which is not now ascertainable.

Sixth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate, from which no proper deduction from the estimated value of the gross estate was made for debts.

The ground upon which this exception is founded is that in arriving at the estimated residuary estate there has not been a proper deduction made for the debts of the decedent, the only deduction made for debts being the debts of the decedent which had been paid by the executors to December 31, 1921, as shown by their first and partial account, whereas the testimony in the case discloses that there are debts in a large, and at present unascertainable, amount, which have not yet been paid.

Seventh. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of [fol. 55a] the residuary estate, in which no proper deduction has been made from the estimated value of the gross estate for the Penn-

sylvania inheritance taxes paid on the general and specific legacies and devises.

The ground upon which this exception is founded is that, in arriving at the estimated net value of the residuary estate, no deduction from the estimated gross value of the estate was made for the Pennsylvania inheritance taxes paid on the general and specific devises and bequests, which taxes, so paid, amount to \$1,925,247.61, and a portion of the tax liability of \$1,188,248.16, so imposed by this decree, is unauthorized under the Pennsylvania statute and unlawful.

Eighth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate, in which no proper deduction has been made from the estimated value of the gross estate for the Pennsylvania inheritance taxes paid on the general and specific legacies and devises.

The ground upon which this exception is founded is that in arriving at the estimated net residuary estate no deduction from the estimated gross value of the estate was made for the Pennsylvania inheritance taxes paid on the general and specific devises and bequests, which tax liability, so imposed, amounted to \$1,925,247.61, and the portion of the tax of \$1,188,248.16, so imposed, will deprive the estate and the residuary legatees of their property without due process of law, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Ninth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of [fol. 56a] the residuary estate without deducting from the estimated value of the gross estate the inheritance taxes paid other states on the transfer of real estate situate in other states.

The ground upon which this exception is founded is that, in ascertaining the net estate, no deduction was made for inheritance taxes paid to other states, which inheritance taxes so paid consisted, in part, of taxes on the transfer of real estate situate in other jurisdictions than Pennsylvania, and the imposition of such a tax liability will deprive the estate and the residuary legatees of their property without due process of law, and also of the equal protection of the laws, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Tenth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate without deducting from the estimated value of the gross estate the inheritance taxes paid other states on the transfer of shares of stock of corporations in other states.

The ground upon which this exception is founded is that, in ascertaining the net estate, no deduction was made for transfer inheritance taxes paid to other states, which transfer inheritance taxes so paid consisted, in part, of taxes on the transfer of shares of the capital stock of corporations incorporated in states other than Pennsylvania,



and the imposition of such a tax liability will deprive the estate and residuary legatees of their property without due process of law, and also deprive them of the equal protection of the laws, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

[fol. 57] Eleventh. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate without deducting from the estimated value of the gross estate the amount paid the United States as an estate tax.

The ground upon which this exception is founded is that, in arriving at the estimated net amount of said residuary estate, there was no deduction made from the estimated value of the gross estate of the amounts heretofore paid the United States as an estate tax, to-wit, \$6,338,898.68, and the imposition of so much of said tax liability as consists of 5% on 87% thereof and 2% on 13% thereof will deprive the estate and the residuary legatees of their property without due process of law, and also deprive them of the equal protection of the laws, in violation of Section 1 of the Fourteenth Article of amendment to the Constitution of the United States.

Twelfth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate without deducting from the estimated value of the gross estate the amount paid to the United States as estate tax and the amount paid to other States as inheritance tax on the transfer of real estate and corporate stocks of corporations of said States and the Pennsylvania inheritance tax on the general and specific devises and bequests.

The ground upon which this exception is founded is that, in arriving at the estimated net amount of said residuary estate, there was no deduction made of the amounts heretofore paid the State of Pennsylvania and the United States and other States as estate and inheritance taxes and the imposition of so much of said tax liability as consists of 5% on 87% thereof and 2% on 13% thereof will de-[fol. 58a] prive the estate and the residuary legatees of their property without due process of law, in violation of the Constitution of the State of Pennsylvania.

Thirteenth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate without deducting from the estimated value of the gross estate the amounts paid to the United States as an estate tax and the amounts paid to other States having laws imposing graduated inheritance taxes and containing exemptions.

The ground upon which this exception is founded is that, in arriving at the estimated net amount of said residuary estate, there was no deduction made of the amounts heretofore paid to the United States and to other States as estate or inheritance taxes, and the imposition of a tax liability of so much of said taxes as consists of 5% on 87% thereof and 2% on 13% thereof violates the provisions of

the Constitution of Pennsylvania, requiring the equality of taxation and prohibiting the passage of local and special laws changing the law of descent or succession, to-wit, Article IX, Sections 1 and 2, and Article III, Section 7.

Fourteenth. To the determination of the amount of the tax liability of the estate based upon an estimated and appraised taxable value of the residuary estate without making any allowance for additional taxes that may hereafter be imposed by the United States or other jurisdictions.

The ground upon which this exception is founded is that, in arriving at the estimated net amount of said residuary estate, there was no deduction or allowance made for additional payments that may have to be made of Federal taxes and taxes to other States and [fol. 59a] countries. The imposition of the tax liability so imposed deprives the estate and the residuary legatees of their property without due process of law, and deprives them of the equal protection of the laws, in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Fifteenth. To the method of determination of the tax liability of said estate, which consists of an alleged unpaid balance of inheritance or transfer taxes.

The ground upon which this exception is founded is that said amount was determined by taking the appraised value on the day of Mr. Frick's death of all of his estate, wherever located, except real estate situated in other States. On so much of this gross estate so determined as will eventually pass to general or specific legatees or devisees a tax was calculated at the rate of 2% and 5%, respectively. An estimate was then made of the remainder of the estate and from that was deducted the amount which had been paid by the executors as administration expenses and debts to December 31, 1921, as shown in their first and partial account. The result in the balance was assumed to be the amount which the residuary legatees would finally receive and upon that was assessed a tax liability of 2% on 13% thereof and 5% on 87% thereof. This computation is based upon the erroneous legal proposition that this is an estate tax and is levied upon the whole of Mr. Frick's estate at the time of his death less certain authorized deductions, whereas under the statute the tax is levied upon the clear value of the amount received by the beneficiaries.

Sixteenth. To the determination and imposition at this time of a tax liability.

[fol. 60a] The ground upon which this exception is founded is that the administration of the estate has not been completed and the amount of the administration expenses and debts has not been ascertained and ascertainment has been impossible and no distribution to the residuary legatees has been made and the tax liability of the estate cannot be computed at this time.



Seventeenth. To the determination of the amount of the tax liability of the estate by including therein interest on the amount of the computed alleged tax liability at the rate of 6% per annum from one year after decedent's death, to-wit, from December 2, 1920, to July 2, 1922, amounting to the sum of \$103,090.02.

The ground upon which this exception is founded is that there was no interest due upon said tax on the date of said decree.

Helen C. Frick, One of the Residuary Legatees under the Last Will and Testament of Henry C. Frick, Deceased, By George B. Gordon, Her Attorney.

[fol. 61a] IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

EXCEPTIONS BY ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. McELDOWNEY, AND WILLIAM WATSON SMITH, EXECUTORS OF THE LAST WILL AND TESTAMENT OF HENRY C. FRICK, DECEASED, TO THE ADJUDICATION AND DECREE OF JULY 7, 1922

(This Exception is similar in every way to the preceding one, and hence was not printed.)

IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

ADDITIONAL EXCEPTIONS BY HELEN C. FRICK, ONE OF THE RESIDUARY LEGATEES UNDER THE LAST WILL AND TESTAMENT OF HENRY C. FRICK, DECEASED, TO THE ADJUDICATION AND DECREE OF JULY 7, 1922—Filed Sept. 13, 1922

And now, to-wit September 13th, 1922, comes Helen C. Frick, one of the residuary legatees under the last will and testament of Henry C. Frick, deceased, and, in addition to the exceptions heretofore filed by her in the above entitled case files the following exceptions to the decree and adjudication made herein on July 7, 1922:

Eighteenth. The said decree is erroneous in including in the appraisal of the estate and determining to be liable for a tax tangible articles of personal property situated, at the time of the death of the said Henry C. Frick, in the States of New York and Massachusetts.

[fol. 62a] The ground upon which this exception is founded is that so much of Article 1, Section 1, of the Act of the General Assembly entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock

of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, A. D. 1919, (Pamphlet Laws page 521) as provides that a tax shall be imposed upon the transfer of any property or of any interest therein or income therefrom to persons or corporations by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere, as construed by the court, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law.

Nineteenth. The said decree is erroneous in appraising the estate and determining its liability for a tax by ascertaining the clear value of the property subject to a tax without allowing a deduction for or on account of taxes paid or to be paid on such estate to the Government of the United States.

[fol. 63a] The ground upon which this exception is founded is that so much of Article 1, Section 2, of the Act of the General Assembly entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, 1919, (Pamphlet Laws page 522) as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States, as construed by the court, is invalid on the ground of its being repugnant to clause 1 of Section 8 of Article 1 of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and exercises, to pay the debts and provide for the common defence and general welfare of the United States, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to-wit, among others, sections 400 to 410, inclusive, of an Act of the Congress of the United States entitled "An Act to provide revenue, and for other purposes," approved February [fol. 64a] 24, 1919, (United States Statutes at Large, volume 40, part 1 pages 1093 to 1101) and section 3467 of the United States Re-

vised Statutes, are the supreme law of the land, and that the judges in every state are bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding, and also to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

Twentieth. The said decree is erroneous in appraising the estate and determining its liability for a tax by ascertaining the clear value of the property subject to a tax without allowing a deduction for or on account of taxes paid or to be paid on such estate to other States.

The ground upon which this exception is founded is that so much of Article 1, Section 2, of the Act of the General Assembly entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid, and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, 1919, (Pamphlet Laws page 522) as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall [fol. 65a] be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to any other State or Territory, as construed by the court, is invalid on the ground of its being repugnant to section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

Twenty-first: The said decree is erroneous in appraising the estate and determining its liability for a tax by ascertaining the clear value of the property subject to a tax without allowing a deduction from the estimated value of the gross estate for the Pennsylvania inheritance tax paid on the general and specific legacies and devises.

The ground upon which this exception is founded is that Article 1, Section 2, of the Act of the General Assembly entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such

decendent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the 20th day of June, 1919 (Pamphlet Laws p. 522), providing that [fol. 66a] "All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the Commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory," as construed by the court, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws.

Helen C. Frick, One of the Residuary Legatees under the  
Last Will and Testament of Henry C. Frick, Deceased,  
By George B. Gordon, Her Attorney.

[fol. 67a]

#### Order of Court

And now, towit, September 13th, 1922, the within additional exceptions to the adjudication and decree made in this case on July 7, 1922 being presented, after notice thereof to counsel for the Commonwealth of Pennsylvania, on motion of counsel for the exceptant and upon consideration by the Court, it is ordered that the additional exceptions herein contained be filed.

Per Curiam.

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#### IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

OPINION—Filed Dec. 5, 1922

MITCHELL, J., for the Court in Banc:

The executors of the estate of the decedent and one of the residuary legatees under his will except to the adjudication of the amount of the tax due the Commonwealth of Pennsylvania on the ground that it is premature at this time.

Under the terms of the will the testator directed the tax on the legacies to be paid out of his residuary estate. The Act of Assembly does not in terms specify the time when the tax shall be paid. The [fol. 68a] Act providing for the imposition and collection of certain taxes upon the transfer of property, etc., approved June 20, 1879, P. L. 521, in Section 38, fixes a charge for interest if the tax be not paid at the end of a year from the death of the decedent, and where there is an unavoidable delay preventing the settlement of the estate there is an interest charge from the end of such year on that part of the estate which is unsettled and on which the tax remains unpaid. It is clear the Legislature intended one year after the death as the time when the tax is due. No other time can be implied. The amount of the tax was the property of the Commonwealth from the death of the owner of the estate, and after allowing a reasonable time in which to administer the estate and determine the amount of the tax, the Commonwealth exacts interest at the rate of twelve per cent per annum until the tax be paid. Where for good reason the settlement of the estate can not be made until after the year a smaller rate of interest is fixed. The provisions of Section 38 are built around the due date of the tax, one year from the death, and the burden of interest is imposed from that time so as to induce payment of the debt. If the tax be not paid at the end of such year proceedings may be instituted in Court to compel payment (see Sections 14 and 29 of the Act of 1919). Section 39 of this Act provides that taxes shall be sued for within five years after they are due. It is now three years since the death of the testator. A reading of the Act, especially of those sections referred to, leads us to the conclusion that the tax became due at the end of one year from the death and that the decrees were not premature. The exception will be dismissed.

The next exception is to the imposition of the tax upon the value of the personal property of the estate located outside of Pennsylvania. It is clear the Act of 1919 did not impose a tax upon the property [fol. 69a] transferred. It is on the succession by the beneficiaries, and for this right to succeed to the property the Commonwealth demands a payment or excise. The character of this tax has been set forth in the late case of Kirkpatrick's Estate, — Pa., —. In the opinion filed by the Auditing Judge in this case a number of cases are cited to show that both the nature and validity of the tax are upheld by the Supreme Court of this State, as well as by the Supreme Court of the United States. The exception will be dismissed.

The executors except to the allowance of the tax to the Commonwealth on the amounts paid to the Federal Government, the amount paid to other States as taxes, and the amount paid to the State of Pennsylvania as inheritance tax on the general and specific legacies. The Supreme Court of Pennsylvania has recently adjudicated these matters in Kirkpatrick's Est., supra, and in accordance with the decision there the exception must be dismissed.

The Commonwealth excepts to the exemption from taxation of the legacy for maintaining the park. The land was given by the testator to the City of Pittsburgh for a public park free to the people

forever. We understand it is not now contended that the land should be taxed, as the gift falls within the provisions of the Act of July 9, 1919, P. L. 794, which exempts from any collateral inheritance tax such an estate passing by will to a municipality for the sole use of the public by way of free exhibition. It is evident, and was apparent to the testator, this ground could not be used by the public and there could be no free exhibition there unless the ground were improved, equipped and made ready for that purpose. To do this the testator at the time he provided the gift of the land, and as a part of the gift, bequeathed a sum sufficient to endow it so that its intended use might be secured. It is admitted in a stipulation [fol. 70a] filed by the representatives of the estate and of the Commonwealth that the income from this fund is not more than will be required to maintain and embellish the land for park purposes. This endowment, which must be used for maintenance and improvement, whether put into additional land, buildings, or works of art, is to make the land given usable by the public. The gift of this money in the manner and for the purpose made comes within the spirit and provisions of the exempting act, and this exception will be dismissed.

The Commonwealth further excepts to the failure of the Court to impose a tax at the collateral rate on two articles of furniture of the value of \$40,500. The exceptant claims these articles are part of "The Frick Collection" and should have passed to that corporation instead of being distributed to the widow of the testator, and therefore should be taxed at the rate of five instead of two per cent. The articles referred to were a part of the furniture of Mr. Frick's bedroom and sitting room in his New York residence. The executors had set these aside to Mrs. Frick under her bequest. Subsequently, the trustees of "The Frick Collection," in determining what articles in the house were the property of "The Frick Collection" under the terms of the will approved the division of the property in the house made by the executors. The executors in their account take credit for these articles as having been delivered to Mrs. Frick. No exceptions were filed to the account, which was confirmed absolutely. The stipulation filed by the counsel for the estate and for the Commonwealth specifies that the furniture in the New York home, in which are included these two articles, consists of nothing more than the ordinary furniture and furnishings suitable for such a residence. The fact that these pieces of furniture are valuable does not necessarily place them in "The Frick Collection". The [fol. 71a-108a] testator desired his gift to "The Frick Collection" should include all articles appropriate or useful for the purpose of said corporation. The executors of the estate and the trustees of "The Frick Collection" have by their action determined that these articles should go to Mrs. Frick. It is hardly to be expected with the record before us as it is this Court can revise the decision of the representatives of the estate and "The Frick Collection" and hold that these two articles are appropriate or useful for the corporation. The exception will be dismissed.

All exceptions will be dismissed.

## IN THE ORPHANS' COURT OF ALLEGHENY COUNTY

DECREE—Filed Dec. 5, 1922

And now, to-wit, Dec. 5, 1922 this matter came on to be heard by the Court in banc upon Exceptions to the decrees made in the above entitled cases, and was argued by Counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed the Exceptions, be, and the same are hereby dismissed and the said decrees are affirmed.

Per Curiam.

Opinion by Mitchell, J., for the Court in Banc.  
(Filed Dec. 13, 1922.)

And now, to-wit, December 13, 1922, the Commonwealth of Pennsylvania, Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, and William Watson Smith, Executors of the last Will and Testament of Henry C. Frick, Deceased, and Helen C. Frick in her individual capacity, except to the foregoing decree and at their instance exception allowed and bill sealed.

Per Curiam.

[fol. 109a-119a] IN THE ORPHANS' COURT IN AND FOR ALLEGHENY  
COUNTY, MARCH TERM, 1922

No. 171

IN RE ESTATE OF HENRY C. FRICK, Deceased

Coram: Hon. H. Walton Mitchell, J.

George B. Gordon, Esq., Allen T. C. Gordon, Esq., Alexander Black, Esq., Miles H. England, Esq., John G. Buchanan, Esq., William R. Scott, Esq., Edgar D. Bell, Esq., Attorneys for Accountants.  
Reed, Smith, Shaw & Beal, Attorneys for the Union Trust Co.

And now, to-wit: Friday, March 31st, 1922, this account came on for audit:

[fol. 120a] TESTIMONY OF WM. J. NAUGHTON

WM. J. NAUGHTON, sworn.

Direct examination.

By Mr. Gordon:

Q. Mr. Naughton, where do you live?

A. Sharpsburg.

Q. What is your occupation?

A. Secretary to the Frick estate.



Q. To the executors?

A. Yes, sir, to the executors.

Q. You are chief accountant of the executors also?

A. Yes, sir.

Q. You were Mr. Frick's financial secretary and chief accountant in his lifetime?

A. Yes, sir.

Q. You are familiar with the account and affairs of the estate are you?

A. Yes, sir.

Q. I wish you would state what relationship the bequests to charities, using that word in the broad sense charitable, educational and benevolent institutions in Mr. Frick's will bears to the whole amount, both to the gross and the net estate? If you have any figures I would prefer that you give them?

A. I have figures Mr. Gordon, but they were worked up very hastily and are approximate. I would be very glad to read those. My books show a total inventory of \$93,000,000; about \$24,000,000—\$24,700,000 goes to the members of Mr. Frick's family leaving a balance of \$68,000,000. From that we take the specific bequests to charitable, benevolent, scientific and religious institutions, or about \$34,000,000 leaving a balance of \$34,100,000; this is the balance after the specific bequests are made. Now we have about \$9,000,000 of taxes, and about \$9,400,000 of inheritance taxes.

[fol. 121a] Q. You mean debts?

A. Yes, sir, about \$9,000,000 of debts, and inheritance taxes of about \$9,000,000, leaving \$15,700,000. Eighty-seven per cent. of this residuary goes to benevolence, amounting to \$13,000,000. Now the specific bequests to benevolent and charitable organizations is \$34,000,000, and 87 per cent. of the residuary bequests, making a total of \$47,700,000 for benevolent purposes.

Q. The total estate is \$93,000,000, and the half of that would be \$46,500,000?

A. Yes, sir, and \$47,700,000 going to benevolent institutions.

Q. More than half of the gross estate?

A. Yes, sir.

Q. As to the net estate?

A. It would be more than half.

Q. Now what would it be as to the net estate on your estimate of taxes?

A. I will have to figure that out and give it to you.

Q. You gave us the taxes as being approximately \$18,000,000?

A. Yes, sir, \$18,400,000.

Q. So it will be just that much more?

A. Yes, sir.

Q. It would be 47 out of 75 approximately?

A. Yes, sir.

Q. This is the estimate of the whole estate, including the real estate outside of Pennsylvania?

A. Yes, sir, this is the whole estate.

By Major Reed: We understand all this is subject to the objections as to its competency and relevancy.

[fol. 122a] By Mr. Gordon: This only has a bearing on the tax question:

Q. I wish you would state whether these taxes paid, inheritance taxes paid to the other States, were taxes either upon real estate located in those other States, or upon shares of stock in corporations of the other States, where it was necessary for the executors to pay the tax in order to get possession of the securities, in order to make a transfer of the securities?

A. Yes, sir.

Q. One was taxes on real estate located in other States, and the other was taxes upon shares of stock of corporations in those States, which could only be transferred for the inheritance tax had been paid?

A. Yes, sir.

Cross-examination.

By Major Reed:

Q. Mr. Frick owned land in Massachusetts, didn't he?

A. Yes, sir.

Q. How much was it worth at the time of his death?

By Mr. Gordon: Do you mean including the buildings on it?

By Major Reed: Of course including the buildings and fixtures.

A. \$723,625.00.

Q. Did he own land in New York?

A. Yes, sir.

Q. How much was his New York real estate worth at the time of his death?

A. It was valued at \$3,290,000.

[fol. 123a] Q. Did that include other lands than the house on Fifth Avenue?

A. Yes, sir, a garage on West 51st Street.

Q. That is all the land he had in New York?

A. Yes, sir.

Q. He also owned land in Indiana did he not?

A. Yes, sir.

Q. What was that worth at the time of his death, including the buildings and other fixtures?

A. \$643,000.

Q. Did he own land in any other States than Massachusetts, Indiana and Pennsylvania?

A. Yes, sir.

Q. Where?

A. Some land in Maine.

Q. What was that worth?

A. \$25,000. Some land in Kentucky, \$150,000; some land in Wisconsin, \$300,000; some land in Colorado \$4,000.

Q. Any in New Jersey?

A. \$21,000 in New Jersey.

Q. Is that all?

A. Yes, sir, that is all according to this list here.

Q. Now Mr. Naughton in the value which you have stated for the New York real estate, there is nothing included for the value of the Frick collection of pictures and work of art is there? The value you have given does not include that?

A. No, sir, that is the real estate value.

Q. The Frick collection was appraised as personal property was it not?

A. Yes, sir.

Q. Separately?

A. Yes, sir.

Q. At something over \$13,000,000?

A. Yes, sir.

[fol. 124a] By Mr. Gordon: The personal property in Mr. Frick's residence in New York, which belonged to him at the time of his death, consisted of four different groups. There was property that was bequeathed to the Frick Collection; there was property which belonged to Mrs. Frick in her individual right; there was property that belonged to Miss Frick in her individual right, and there was property that belonged to Mr. Frick, which, starting we will say with the household supplies on hand and passing on to some articles of furniture, which might or might not have been regarded to be such work of art as would fall within the bequest to the Frick collection. The executors employed experts to make an inventory of this property, and to divide it into these four classes. Those executors selected such articles belonging to Mr. Frick as they thought were available for the Frick Collection, and valued them, and they are the articles mentioned in the Pennsylvania appraisement already on file, and valued in the Pennsylvania appraisement at \$13,132,391. Subsequently, and after the incorporation and organization of the New York corporation, the Frick Collection, the trustees of that collection appointed a sub-committee to take up the question of what articles contained in the house they would claim under their bequest, and that sub-committee made an investigation and went over the inventory, and made a report to the Frick Collection that they were of the opinion that the original division made by these experts which the executors had employed was correct, and that they would accept the articles, the Frick Collection would accept the articles specified in that inventory as being the articles which they claimed. Credit is [fol. 125a] claimed in the account filed in this case for those specific articles so designated on the inventory as having been delivered to the Frick Collection, and no exceptions were filed by the Frick Collection to that account, and that account was confirmed nisi and absolute.

By Mr. Gordon :

Q. I believe that is a correct statement of the facts?

A. Yes, sir.

By Major Reed: The Commonwealth believes that the personal property which has been turned over to the Frick Collection, and which appears by the inventory and by the executors first and partial account to be worth \$13,132,391 at the time of Mr. Frick's death, was all property which by the will passed to the Frick Collection; but the Commonwealth also believes that there are two additional articles which by fair construction of the will should go to the Frick Collection, and we claim that they should be taxed like the other articles of the Frick Collection, and we wish at this point to specify those articles. They appear at page 58 of the Appraisement for Transfer Inheritance tax purposes, and were two articles of antique and artistic furniture, which were in Mr. Frick's sitting room: The first was, a "Louis XV Tulip Rosewood Library Table, thirty inches wide, six feet long" valued at \$5,500; the second was a "16th Century French Walnut Cabinet" valued at \$35,000. We claim that those articles did not pass by the bequest of the furniture and personal effects to Mrs. Frick, but were articles of antique and artistic value located in the Fifth Avenue house, and are exactly within the terms of the bequest to the Frick Collection.

[fol. 126a] By Mr. Gordon: This committee did not accept them as part of the collection.

By Major Reed: They are still held by Mrs. Frick and not turned over to the Frick Collection.

By Mr. Gordon: Have you any objections to the statement of facts I made?

By Major Reed: I will agree to all that, if you will add these two other facts:

1st. That these two articles which I have named, Louis XV Tulip Rosewood Library table, appraised at \$5,500.00, and this 16th Century French Walnut Cabinet, appraised at \$35,000, are not included in the articles which have been turned over to the collection, but are included in those articles allotted to Mrs. Frick by the executors.

By Mr. Gordon: That is correct.

By Major Reed: That the Commonwealth was not notified of this separation at the time it was made by the executors and their representatives, and by the Frick Collection, and by Mrs. Frick, in time to participate in the discussion between these parties; but that we were notified after the separation had been agreed upon by these various [fols. 127a-131a] parties in interest, and the appraisers acting for the Commonwealth were furnished at the time they made their appraisement with an appraisement that had been made for the executors, and this executor's appraisement did show the assignment of these two articles to Mrs. Frick and not to the collection; thereupon the Commonwealth's appraisers estimated all of the personal property in the New York house without making any separation either

to Mrs. Frick or to the collection, including these two articles together with articles that clearly went to Mrs. Frick and articles that clearly went to the Collection, without any separation.

As it now stands we are both agreed.

By Mr. Gordon: That is our case if the Court please.

By Major Reed: We have no evidence to offer.

[fol. 132a]

EVIDENCE: EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA,  
County of Allegheny, ss:

Know all men by these presents, that, at Pittsburgh, in the County aforesaid, on the 6th day of December, A. D. 1919, before me, William Conner, Register for the Probate of Wills and Granting Letters of Administration in and for the County of Allegheny, in the Commonwealth of Pennsylvania, the last Will and Testament of Henry C. Frick, late of Pittsburgh in the County aforesaid, deceased (a true copy whereof is to these presents annexed), and duly admitted to probate; and Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, the Executors in said Will and Testament named, having appeared before me and taken and subscribed the oath of office prescribed by law.

Now therefore, I, William Conner, Register as aforesaid, do grant these Letters Testamentary, unto the said Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, committing unto them the administration of all and singular the goods and chattels, rights and credits, which were of said deceased, and requiring them to exhibit a true and perfect inventory thereof into the Register's office, at Pittsburgh, within thirty days, and to render a just and true account of said administration in six months from the date hereof, and to regard and comply with the provisions of the law relating to inheritance tax.

[fol. 133a] In testimony whereof, I have hereunto set my hand and the seal of said Office at Pittsburgh, this 6th day of December in the year of our Lord one thousand nine hundred and nineteen.

Wm. Conner, Register. (Seal of the Register's Office.)

A true and correct copy:

Miles H. England, Of Counsel for Executors of the Will of  
Henry C. Frick.

I, Henry C. Frick, a citizen of the Commonwealth of Pennsylvania and a resident of the City of Pittsburgh in said Commonwealth, do hereby make, publish and declare this my Last Will and Testament in manner and form following:

Article I

Section 1. I devise unto my wife Adelaide H. C. Frick, during the term of her natural life, without impeachment of waste, my

country place at Pride's Crossing, Massachusetts, and all the land appurtenant thereto or used in connection therewith, including the land south of Hale Street and the land north of Hale Street, and all buildings, structures and improvements thereon of every kind and description, and upon the death of my said wife I devise all the property aforesaid unto my daughter Helen C. Frick and her heirs forever.

[fol. 134a] Section 2. I give and bequeath unto my said wife Adelaide H. C. Frick, if she shall survive me, and if she shall not survive me then unto my daughter Helen C. Frick, all my wearing apparel, jewelry, personal effects, furniture, pictures, works of art, silver, plate, ornaments, bric-a-brac, household goods or furnishings and supplies, books, linen, china, glass, horses, carriages, automobiles, harness, articles of stable and garage equipment or furniture, and all implements, plants, and tools, and all live stock which I shall own at the time of my death, excepting, however, from this bequest all articles of personal property which are bequeathed in and by the Fourth Article of this will.

I further give and bequeath unto my said wife, if she shall survive me, the sum of one million dollars.

Section 3. I give and bequeath unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as trustee, the sum of five millions dollars, in trust, to invest and reinvest the same, and to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of said income unto the use of my said wife Adelaide H. C. Frick during her natural life, and in further trust, upon the death of my said wife, to assign, transfer and deliver the principal of the said trust fund, and I hereby give and bequeath the same, to such persons and in such interests and proportions as my said wife shall in and by her last will and testament direct, limit and appoint.

Section 4. The provisions made by this my will for the benefit of my said wife are in lieu of dower and of all other rights or interests of any kind whatsoever which she may have in or to my estate.

Section 5. Subject to the said life estate of my said wife in a portion thereof, I devise all the real estate situated in the State of Massachusetts [fol. 135a] which I shall own at the time of my death unto my said daughter Helen C. Frick and her heirs forever.

Section 6. I devise unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, the building in the City of Pittsburgh known as the "Frick Building," together with the land upon which the same is erected bounded by Fifth Avenue, Grant Street, Diamond Street and Scrip Alley, and the building in said city known as the "Frick Building Annex," together with the land upon which the same is erected bounded by Diamond Street, Cherry Alley, Relief Alley and Scrip Alley, in

trust, to hold the same, to rent the offices, rooms and space therein, with power in its discretion to make leases thereof for reasonable periods of time, although the same may extend beyond the term of the trust, to collect and receive the rents, issues and profits thereof and out of the same to pay all taxes, insurance, repairs and other expenses of the trust, including a reasonable compensation to the said trustee, and to pay and apply the residue of said rents, issues and profits unto my said daughter Helen C. Frick during her natural life, and in further trust upon the death of my said daughter to convey, assign, transfer and deliver the property held in trust as aforesaid, and I give, devise and bequeath the same, unto such of her issue surviving her, and in such interests and proportions as my said daughter shall in and by her last will and testament in that behalf direct, limit and appoint, and in default of such appointment, then equally to and among such surviving issue, and if my said daughter shall die leaving no issue her surviving, then unto such persons and in such interests and proportions as my said daughter shall in and by her last will and testament direct, limit and appoint.

[fol. 136a] Section 7. I give and bequeath unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, the sum of one million dollars, in trust, to hold the same during the life of my said daughter Helen C. Frick, and to invest and reinvest the same, and to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to said trustee, from time to time to apply said income, or if in the judgment of the said trustee it shall be necessary so to do, any part of the capital of the said trust fund, to the making of extraordinary repairs, restorations, replacements, betterments, additions and improvements in and to the said "Frick Building" and the said "Frick Building Annex" and their equipment, and to pay and apply the residue of said income not used for those purposes in each and every year to the use of my said daughter Helen C. Frick during her life, and in further trust upon the death of my said daughter to assign, transfer and deliver the principal of the said trust fund, or so much thereof as shall then remain, and I hereby give and bequeath the same, unto such of her issue surviving her, and in such interests and proportions as my said daughter shall in and by her last will and testament in that behalf direct, limit and appoint, and in default of such appointment, then equally to and among such surviving issue, and if my said daughter shall die leaving no issue her surviving, then unto such persons and in such interests and proportions as my said daughter shall in and by her last will and testament direct, limit and appoint.

Section 8. I give and bequeath unto my said daughter Helen C. Frick the sum of five million dollars.

Section 9. If my son Childs Frick shall survive me, but not otherwise, I give and bequeath unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, the sum of two million dollars, in trust, to invest and rein-



vest the same and to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of said income unto the use of my son Childs Frick during his natural life, and in further trust upon the death of my said son to assign, transfer and deliver the said trust fund, and I hereby give and bequeath the same, unto such of his issue surviving him, and in such interests and proportions, as my said son shall in and by his last will and testament in that behalf direct, limit and appoint, and in default of such appointment, then equally to and among such surviving issue, and if my said son shall die leaving no issue him surviving, then unto such persons and in such interests and proportions as my said son shall in and by his last will and testament direct, limit and appoint.

Section 10. I give and bequeath unto my said son Childs Frick, if he shall survive me, the sum of one million dollars.

Section 11. If my said son Childs Frick shall die before me leaving issue me surviving, then and in that event I give and bequeath the sum of three million dollars unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, in trust, to divide the same into as many equal shares as there shall be children of my said son me surviving and children of my said son dying before me leaving issue me surviving, and to set apart one of such shares for the benefit of each child of my said son who shall survive me and one of such shares for the benefit of the issue, taken collectively, me surviving of each child of my said son who shall have died before me. And as to each share so set apart for the [fol. 138a] benefit of a child of my said son, I give and bequeath the same unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, in trust, to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of said income unto the use of such child during his or her life, and upon the death of such child I give and bequeath said share unto the issue of such child, if any, him or her surviving, and in such interests and proportions as such child shall in and by his or her last will and testament in that behalf direct, limit and appoint, and in default of such appointment, then equally to and among such surviving issue; and if such child shall die leaving no issue him or her surviving, then unto such persons and in such interests and proportions as such child shall in and by his or her last will and testament direct, limit and appoint.

And as to each such share so set apart for the benefit of the issue me surviving of a deceased child of my said son, I direct said trustee to divide the same into as many equal sub-shares as there shall be issue of such deceased child of my said son living at the time of my death, and to set apart one of such sub-shares for the benefit of each of such issue, and I give and bequeath each such sub-share unto The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, in trust, to collect and receive the income thereof,

and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of said income unto the use of the person for whose benefit the same shall have been so set apart during his or her life, and upon his or her death I give and bequeath the same unto his or her issue, if any, him or her surviving, in such interests and proportions as the [fol. 139a] said person shall in and by his or her last will and testament in that behalf direct, limit and appoint, and in default of such appointment then equally to and among such surviving issue, and if such person shall die leaving no issue him or her surviving, then unto such persons, and in such interests and proportions, as such person shall in and by his or her last will and testament direct, limit and appoint.

Section 12. If Frances Dixon Frick, the wife of my said son Childs Frick, shall survive me, but not otherwise, I give and bequeath to The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, the sum of two million dollars, in trust, to invest and reinvest the same and to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of said income unto the use of the said Frances Dixon Frick during her natural life, and in further trust upon her death to assign, transfer and deliver the said trust fund, and I hereby give and bequeath the same, unto such of the issue surviving her of her marriage with my said son, and in such interests and proportions, as she shall in and by her last will and testament in that behalf direct, limit and appoint, and in default of such appointment, then equally to and among such surviving issue, and if the said Frances Dixon Frick shall leave her surviving no issue of said marriage, then to such persons and in such interests and proportions as she shall in and by her last will and testament in that behalf direct, limit and appoint.

If the said Frances Dixon Frick shall die before me and my said son Childs Frick shall survive me, then and in such event I direct that the said sum of two million dollars shall be added to the trust [fol. 140a] created in and by the ninth section of this Article of my will for the benefit of my said son and remaindermen.

If neither my said son nor the said Frances Dixon Frick shall survive me, then and in that event I direct that the said sum of two million dollars shall be added to the trust created by the eleventh section of this Article of my will for the benefit of the children and issue of my said son and remaindermen.

Section 13. I hereby authorize the trustee of the several trusts by this Article of my will created to invest the said several trust funds and to keep the same invested, with power in its discretion from time to time to alter and vary all investments, whether original or subsequent, and with power to invest the said trust funds, at all times and from time to time, in such property, investments and securities, whether real or personal as the said trustee shall deem proper and

whether the same be of the character or class regarded by law as proper investments for trust funds or not, and in its discretion to sell, at public or private sale as it may deem proper, and convert all or any part of the said trust fund into other investments. It is my wish, however, that the said trustee shall not sell either of the properties bequeathed in trust for the benefit of my said daughter, and known as the "Frick Building" and the "Frick Building Annex" during the life of my said daughter, unless there be some strong reason requiring such sale, but if in the judgment of the said trustee, it becomes advisable to sell the said buildings or either of them, with the land upon which the same are or is erected, my said trustee may in its discretion sell the same, holding the proceeds upon the same trusts for the benefit of my said daughter.

No property held in trust under the provisions of this Article of my will, nor any income thereof, shall be subject or liable to or for [fol. 141a] any contracts, debts, engagements or liabilities of the beneficiary of any such trust, now or hereafter made, contracted or incurred, but shall be absolutely free from the same, and no beneficiary of any trust by this Article of my will created shall have power to sell, assign or encumber all or any part of the principal of the trust fund or his or her interest therein respectively, or the income thereof, or to anticipate such income.

Section 14. In each case in which, upon the failure of a life beneficiary to exercise the power of appointment or selection among his or her surviving issue, I have above devised or bequeathed a trust fund equally to and among the surviving issue of such life beneficiary, it is my intention that such issue shall take per stirpes and by way of representation, so that the issue of a deceased person shall take, per stirpes, the share the parent would have taken if living, but so that no issue of a living person shall take concurrently with such person.

Section 15. I direct that the income of all trusts created by this Article of my will shall be deemed to accrue for the benefit of the beneficiary from the date of my death, and pending the administration of my estate and until the respective trust funds are established. I direct my executors from time to time to pay from my general estate to the beneficiary of each trust such sums as in their judgment they shall determine to be equivalent to the income which the trust fund for the benefit of such beneficiary would probably have produced during such period had the same been invested.

Section 16. If it shall happen that the beneficiary of any trust hereinbefore created to whom the trustee is directed to pay over the income of the trust fund shall be a minor, I direct that the trustee of [fol. 142a] such trust shall, during the minority of such beneficiary, instead of paying over the income to such beneficiary, apply to his or her support, maintenance and education so much of the income of the trust as such trustee shall in its absolute discretion deem proper, accumulating for the benefit of such minor the surplus income not

so applied, and paying over to such beneficiary on his or her attaining the age of twenty-one years all such surplus with its accumulations. Any income thus directed to be applied to the support, maintenance and education of a minor may be either directly so applied by the trustee, or in its discretion may be paid over by it to the parent or guardian of the person of such minor, and the receipt of such parent or guardian shall be a sufficient voucher and discharge to such trustee for all payments so made by it.

## Article II

I give and bequeath the sum of Fifty Thousand Dollars to each of the children of my brother, J. Edgar Frick, of Wooster, Ohio, and to each of the children of my sister Maria O. Overholt, of Wooster, Ohio, and to each of the children of my sister Anna F. Braddock, of Mt. Pleasant, Pennsylvania, and to each of the children of my sister Sallie Lott, of Wooster, Ohio, and to each of the children of my uncle Christian S. Overholt, deceased, of Mt. Pleasant, Pennsylvania. I give and bequeath to my nephew Karl F. Overholt the sum of fifty thousand dollars in addition to the amount he will receive as a child of my sister Maria O. Overholt. If any legatee mentioned in this Article of my will shall die before me leaving lawful issue me surviving, such issue of such deceased legatee shall take the sum which such legatee would have received if living.

[fol. 143a]

## Article III

I give and bequeath unto my daughter Helen C. Frick the sum of two hundred thousand dollars. While this bequest to my said daughter is absolute and I impose upon her no trust or duty, expressed or implied, in reference thereto, it will enable her to make effective certain of my wishes which are known to her.

I give and bequeath unto my friend, John P. Grier, the sum of one hundred thousand dollars.

I give and bequeath unto my chauffeur, George Despres, the sum of twenty thousand dollars.

## Article IV

Section 1. I give, devise and bequeath my dwelling house situate on the easterly side of Fifth Avenue in the Borough of Manhattan, City of New York, together with all the land upon which the same is erected or which is appurtenant thereto, being all the land now owned by me in the block bounded by Fifth Avenue, Seventieth Street, Madison Avenue and Seventy-first Street, and also all other land, if any, situate in said block, which I may hereafter acquire and which I shall own at the time of my death, and all the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto my wife Adelaide H. C. Frick, to have and to hold the same unto her my said wife, so long only as she shall occupy the same as one of her residences; and upon the death

of my said wife, or if prior thereto my said wife shall cease to occupy said premises as a residence, or shall at any time in writing notify the trustees hereinafter in this Article of my will named, or the corporation hereinafter directed to be formed, of her election [fol. 144a] to discontinue the use of said premises as a residence, then upon the happening of whichever of said events shall first occur, I give, devise and bequeath all the said dwelling house, lands and property, with the appurtenances, unto the corporation hereinafter in this Article directed to be formed.

Section 2. I direct the trustees hereinafter in this Article of my will named, immediately upon my death and during the lives of my said wife and my eldest child living at my death and the survivor of them, to cause to be duly incorporated, in such form as shall be satisfactory to said trustees, under and pursuant to the laws of the State of New York, whether by special act or under the provisions of a general law, an institution to be known as "The Frick Collection" for the purpose of establishing and maintaining a gallery of art in and at the said house and premises above described, and encouraging and developing the study of fine arts, and of advancing the general knowledge of kindred subjects; such gallery of art to be for the use and benefit of all persons, whomsoever, to the end that the same shall be a public gallery of art to which the entire public shall forever have access, subject only to reasonable regulations to be from time to time established by the said corporation.

Such corporation may have such powers as the said trustees shall determine to be appropriate or necessary to enable it fully to carry out the spirit and purposes of the gifts made to it by this my will.

I authorize the said trustees to organize the said corporation, to determine the number of its directors or trustees, and to select the first board of directors or trustees thereof, and it would be agreeable to me that they themselves should serve as members of such board.

[fol. 145a] Section 3. All the books, pictures, paintings, engravings, porcelains, enamels, bronzes, statuary, rugs, tapestries, carpets, curtains, antique or artistic furniture and furnishings, bric-a-brac and other works of art which at the time of my death shall be contained in or usually kept by me in my dwelling house aforesaid, together with all other articles of personal property which at the time of my death shall form a part of the furnishing and equipment of my said dwelling house, including the organ therein installed, I give and bequeath unto my wife Adelaide H. C. Frick, my daughter Helen C. Frick, my son Childs Frick, George F. Baker, Junior, J. Horace Harding, Walker D. Hines, Lewis Cass Ledyard, John D. Rockefeller, Junior, and Horace Havemeyer, and the survivors and survivor of them and their successors, in trust; to hold, maintain and preserve the same in the house aforesaid until the incorporation of the institution aforesaid, and upon said incorporation to assign, transfer and deliver, and I hereby give and bequeath the same, unto the said corporation to be known as "The Frick Collection."

It is my desire that this bequest be liberally construed to the

end that it may include all articles appropriate or useful for the purpose of said corporation.

Section 4. I give and bequeath unto my wife Adelaide H. C. Frick, my daughter Helen C. Frick, my son Childs Frick, George F. Baker, Junior, J. Horace Harding, Walker D. Hines, Lewis Cass Ledyard, John D. Rockefeller, Junior, and Horace Havemeyer, and the survivors and survivor of them, and their successors, the sum of fifteen million dollars, in trust to invest the same and keep the same invested, with power to alter and vary all investments whether original or subsequent, and with power to invest the said trust fund at all times and from time to time in such property, investments and [fol. 146a] securities, whether real or personal, as they shall deem proper and whether the same be of the character or class regarded by law as proper investments for trust funds or not, and in further trust to collect and receive the income arising from the said trust fund, and, until the incorporation of the said institution, to apply so much of the said income as shall be necessary to the payment of the taxes, assessments, insurance, repairs and restoration of my said dwelling house and premises and to guarding and protecting therein all the paintings, works of art and other articles of personal property above described and keeping the same in proper repair and condition, and from time to time until the incorporation of the said institution to apply so much of said income as shall not be needed for the above mentioned purposes to the use, share and share alike, of my said wife, Adelaide H. C. Frick, my daughter, Helen C. Frick, and my son, Childs Frick, or such of them as shall from time to time be living. And upon the incorporation of the said institution, in further trust to convey, assign, transfer and deliver, and I hereby give and bequeath, all of the said trust fund unto the said corporation hereinbefore directed to be formed and to be known as "The Frick Collection," the same to constitute and form a permanent endowment fund for such corporation, and the income of such endowment fund to be used for the maintenance, care, protection and support of said gallery of art and the personal property therein contained, and the making of any alterations, improvements, additions or betterments in or to said premises, and any surplus of such income to be expended from time to time as the directors, trustees or managers of said corporation may determine in the purchase of other suitable works of art to form part of such gallery of art, and any other corporate purposes of said corporation. So long, however, as the estate in my said [fol. 147a] dwelling house and lands devised to my wife in and by the first section of this Article of my will shall continue, the said corporation shall apply so much of the income of said endowment fund as shall be necessary to the payment of the taxes, assessments, insurance, repairs and upkeep of my said dwelling house and premises and the maintenance, preservation and protection in said dwelling house of the articles of personal property contained therein and hereinbefore bequeathed to said corporation. It is my wish that said corporation shall, in respect to its said endowment fund, have the like broad powers and discretion of investment as are hereinbefore in this section conferred upon the trustees herein named.



I direct that the trusts created by the third section and by this present fourth section of this Article of my will shall take effect as of the time of my death, and to that end I direct that my executors shall, as soon as may be after my death, put the said trustees into possession of all the articles of personal property specifically bequeathed to them in and by said third section, and that the said sum of Fifteen Million Dollars bequeathed to said trustees in and by this fourth section shall be transferred to them as soon as may be after my death, and until the same shall be so transferred I direct my executors to pay to said trustees from my general estate interest upon said sum of Fifteen Million Dollars at the rate of four (4) per cent per annum, as representing the income which the said trust fund would have earned in the hands of said trustees.

Neither my executors, nor the trustees of the temporary trusts created by the third section and this fourth section of this Article of my will, nor the said corporation, shall be under any obligation to cause the works of art and other articles of personal property by this [fol. 148a] Article of my will bequeathed to be insured, or be liable for any loss or injury to the same.

Section 5. If any of the persons named as trustees in the third and fourth sections of this Article shall die before me, or shall fail or be unable to accept the trusts thereby created, it is my will that such of them as shall survive me and shall accept said trusts shall, acting by a majority, appoint proper persons to fill all vacancies thus occasioned; and if thereafter and prior to the termination of said trusts by the transfer of the trust funds and property to said corporation, any trustee shall die or resign or become for any reason unable to perform the duties of said trusts, the surviving or continuing trustees shall, acting by a majority, appoint proper persons to fill such vacancies, to the end that said trustees shall at all times during the continuance of said trusts be nine in number. Any writing signed by said trustees, or a majority of them, shall be conclusive evidence of such appointment. All acts of said trustees shall be valid if authorized by a majority of the trustees in office at the time, with like force and effect as if all had joined therein.

Section 6. I am conscious that in asking their acceptance of these trusts for carrying out my wishes for the formation and organization of "The Frick Collection," I am imposing upon these gentlemen a duty which may prove very burdensome, and my only justification for asking this service at their hands is found in my belief that they will undertake it because it is a public service. While I fully appreciate the fact that they would not be willing to accept for such a service the usual legal compensation of trustees, nevertheless I beg that each of these trustees, other than the members of my family, whether named herein or hereafter appointed to fill vacancies as [fol. 149a] above provided, will accept, as an expression of my gratitude for his aid in carrying out a purpose which I have long cherished and which is very dear to me, the sum of Fifty Thousand Dollars, which I hereby direct my executors to pay.



Section 7. It is my desire and purpose through the provisions of this Article of my will to found an institution which shall be permanent in character and which shall encourage and develop the study of the fine arts and which shall promote the general knowledge of kindred subjects among the public at large.

The devise and gifts made by this Article to the said corporation herein directed to be formed and to be known as "The Frick Collection" are subject only to the condition that the said gallery of art shall at all times subsequent to the termination of the estate in my said dwelling house devised to my wife in and by the first section of this Article of my will, be maintained under the name which I have directed to be given to said corporation, and in and upon the premises mentioned in this Article, and it is my will that such of my paintings and other works of art as are herein bequeathed to it shall at all times be there preserved and maintained.

Section 8. In the event that for any reason the devise and gifts made in this Article made to the said corporation to be known as "The Frick Collection" shall fail to take effect, then and in such event I give, devise and bequeath unto my daughter Helen C. Frick and her heirs forever all the property, real and personal, hereinbefore devised or bequeathed to or for the benefit of said corporation.

[fol. 150a]

## Article V

The tract of land comprising about one hundred and fifty-one (151) acres, situate in the old Twenty-second (now Fourteenth) Ward of the City of Pittsburgh, Pennsylvania, and bounded by certain boundaries now or formerly named as follows, viz.: On the North by Forbes Street and the Homewood Cemetery; on the East and South by land formerly owned by Frank Moore, Braddock Avenue, land now or late of J. Koutatz, Milton Avenue, Henrietta Avenue, land now or late of J. Koutatz, La Clair Street, land now or late of J. Koutatz, Hutchinson Avenue, land now or late of Mrs. M. McCombs and Phillips Estate, and on the West by land now or late of Mrs. A. D. Shaw, Shaw Avenue and Beechwood Boulevard, continuing to the intersection of said Beechwood Boulevard and Forbes Street, I hereby devise to said City of Pittsburgh and its successors forever, as a public park, free to the people, subject only to such reasonable regulations as said City may make with reference to the use thereof. It shall be the duty of the said City to maintain, improve and embellish the said park and keep the same in proper condition. If in the judgment of The Union Trust Company of Pittsburgh, as Trustee, as hereinafter set forth, the said City shall fail in performing these duties or any of them, then the said trustee may itself perform or cause to be performed the neglected duties of the City, and for such purpose, by its agents, employees or representatives shall have access to the said park at all times, and the said City shall have no right to interfere with or prevent the reasonable prosecution of said work.

[fol. 151a] I give and bequeath to The Union Trust Company of Pittsburgh, of the City of Pittsburgh, Pennsylvania, as Trustee, the sum of Two Million Dollars, In Trust, to hold the same as a trust fund for the maintenance of the said park, and to invest and reinvest the same and to collect and receive the income thereof, and after paying the expenses of the trust, including a reasonable compensation to the said trustee, to pay and apply the residue of the said income to maintaining, improving, embellishing and adding to the said park and keeping the same in proper condition.

So long as, in the judgment of the said trustee, the said City shall perform its duties as aforesaid, the said income shall be paid by the said trustee to the proper municipal authorities from time to time in each year upon the production of vouchers or evidence satisfactory to said trustee showing that the amounts of the respective payments have been actually expended in the discharge of such duties, or that such expenditures are about to be made, and in all cases where payments are made to the municipal authorities in advance of such expenditures, said trustee may require the production of vouchers or evidence satisfactory to it immediately after such expenditures, showing that the same have been made. If, on the ground that the City has neglected its duties, the said trustee shall have at any time itself undertaken the discharge of such duties, it may again from time to time make payments of said income to said City upon being satisfied that the City is discharging or will discharge its duties aforesaid.

No building or buildings shall ever be erected within the said tract of land which shall materially interfere with the use of the same as a park. Nor shall any building or structure of any kind ever be erected thereon without the consent in writing of the trustee for the [fol. 152a] time being of the trust by this Article of my will created.

I authorize and empower the said trustee in its discretion from time to time to invest and reinvest the said trust fund and from time to time to alter and vary all investments, whether original or subsequent, and to invest the said trust fund at all times and from time to time in such property, investments and securities, whether real or personal, as the said trustee shall deem proper and whether the same be of the character or class regarded by law as proper investments for trust funds or not, and in its discretion to sell, at public or private sale as it may deem proper, and convert all or any part of the said trust fund into other investments.

#### Article VI

In the event that my estate should be insufficient to provide in full for all the bequests and devises hereinbefore made, I direct that the same shall have priority in the order in which the successive Articles of my will are hereinabove set forth, but no bequest or devise contained in any Article shall have any preference or priority over any other bequest or devise contained in the same Article.

## Article VII

All the rest, residue and remainder of my property and estate, of whatsoever nature and wheresoever situated, and whether acquired before or after the execution of this will, and including all property not hereinbefore effectually disposed of or the disposition whereof hereinbefore attempted to be made shall by reason of lapse or other [fol. 153a] cause fail to take effect, and all property over which at the time of my death I shall have any power of testamentary disposition, I now dispose of as follows, that is to say: I direct my executors to divide the same into one hundred equal shares and I do hereby give, devise and bequeath said shares as follows:

To the Educational Fund Commission, which now has its office in the "Frick Annex," in the City of Pittsburgh, Pennsylvania, ten of said shares, or, if said institution cannot by that name take and hold the same, then I give and bequeath said ten shares unto John A. Brashear, William L. Scaife, Charles Reisfar, George W. Gerwig, John D. Shafer, Joseph Buffington and C. B. Connelly, and the survivors of them and their successors, members of said Educational Fund Commission, as Trustees, to hold and invest the same as an endowment fund for said Educational Fund Commission, with power to alter and vary all investments, whether original or subsequent, the income thereof to be applied to carrying on the educational and charitable work of said Commission, with power in said trustees, at any time, in their discretion to transfer said fund to any corporation which may be formed for the purpose of carrying on the work of said Commission. In the event that this gift to said trustees shall take effect, they shall have the like broad powers and discretion of investment as are in and by the fourth section of the Fourth Article of this will conferred upon the trustees therein named with respect to the endowment fund of "The Frick Collection."

To the Children's Hospital, now situated at Forbes Street and McDevitt Place in said City of Pittsburgh, one of said shares. [fol. 154a] To the Allegheny General Hospital, now situated at Number 100 East Stockton Avenue, in said City of Pittsburgh, one of said shares.

To the Home for the Friendless, now situated at Number 423 Eastern Parkway, in said City of Pittsburgh, one of said shares.

To the Kingsley House Association, now situated at Fullerton Street and Bedford Avenue, in said City of Pittsburgh, one of said shares.

To the Mercy Hospital, now situated at Stevenson and Locust Streets, in said City of Pittsburgh, ten of said shares.

To the Pittsburgh Free Dispensary, in said City of Pittsburgh, one of said shares.

To the Pittsburgh Newsboys Home, in said City of Pittsburgh, one of said shares.

To the Western Pennsylvania Hospital, now situated at Number 488 Friendship Avenue, in said City of Pittsburgh, one of said shares.

To the Central Young Women's Christian Association, now situated at Number 59 Chatham Street, in said City of Pittsburgh, one of said shares.

To the Uniontown Hospital, in Fayette County, Pennsylvania, one of said shares.

To the Cottage State Hospital, in Connellsville, Fayette County, Pennsylvania, one of said shares.

To the Westmoreland Hospital, in Greensburg, Westmoreland County, Pennsylvania, one of said shares.

To the Mount Pleasant Memorial Hospital, of Mount Pleasant, Westmoreland County, Pennsylvania, one of said shares.

To the Braddock General Hospital, of Allegheny County, Pennsylvania, one of said shares.

To the Homestead Hospital, of Homestead, Pennsylvania, one of said shares.

[fol. 155a] To the Trustees of Princeton University, in Princeton, New Jersey, thirty of said shares.

To the President and Fellows of Harvard College, in Cambridge, Massachusetts, ten of said shares.

To the Massachusetts Institute of Technology, ten of said shares.

To the Society of the Lying-In Hospital of the City of New York, three of said shares.

The remaining thirteen shares I give, devise and bequeath unto my daughter Helen C. Frick and her heirs.

In the event that any of the institutions in this Article of my will named, to which I have given any of said shares of my residuary estate, shall be unable lawfully to take and hold the full amount of the legacy thus given to it, the bequest hereby made to such legatee shall be valid and effectual to the extent of the property which it is lawfully entitled to take and hold, and I give, devise and bequeath the excess unto my said daughter Helen C. Frick and her heirs; and if any of said legatees shall be able lawfully to take and hold no part of the legacy given to it, then I give, devise and bequeath the whole of such legacy unto my said daughter and her heirs.

All amounts which I thus give to my said daughter by reason of the legal incapacity of the legatee thereof to take and hold the same are given to her in absolute and unqualified ownership.

It would, nevertheless, be agreeable to me that she should so dispose of these amounts that my general purpose in making these legacies should be accomplished; but this is merely the expression of my wish, and shall not be construed to impose upon my said daughter any duty or obligation, legal, equitable or moral, nor in any manner to qualify or affect her absolute ownership of the amounts thus bequeathed to her.

[fol. 156a] It is my desire that the shares of my residuary estate which I have bequeathed by this Article to the several institutions hereinbefore named shall in each case constitute a part of the permanent endowment fund of the institution, and to that end I direct that the principal thereof be kept invested and that the income be applied to the objects and purposes of the institution.

## Article VIII

I direct that all inheritance, legacy, succession or similar duties or taxes which shall become payable in respect to any property or interest passing under my will or any codicil which I may hereafter execute, shall be paid out of the capital of my residuary estate.

## Article IX

I hereby nominate and appoint my said wife Adelaide H. C. Frick, my daughter Helen C. Frick, my son Childs Frick, and Henry C. McEldowney, of Pittsburgh, Pennsylvania, and William Watson Smith, of Pittsburgh, Pennsylvania, to be the executors of this my will.

In view of the provision hereinbefore made for my wife, my son and my daughter, it is my wish that neither of them shall accept any commissions or other compensation as an executrix or executor of my will.

To each of the other persons named as executor of this will, viz.: to the said Henry C. McEldowney and to the said William Watson Smith, I bequeath the sum of two hundred and fifty thousand dollars to be paid upon the final settlement of my estate, in lieu of all other compensation as an executor of this will; and the appointment of each of them as an executor is conditioned upon his acceptance of said sum in lieu of all commissions or other compensation as an executor of this will.

[fol. 157a] If either of them, having accepted the office of executor upon this condition, shall thereafter die or become incapacitated for performing the duties of that office prior to the final settlement of my estate, he or his executors or administrators shall nevertheless be entitled to receive said legacy, as if he had continued to serve as executor until the completion of the administration of my estate.

I direct that no bond or other security shall ever be required of either of my executors or of any trustee herein named, or of any trustee appointed in pursuance of any power herein given because of non-residence in any estate or jurisdiction wherein this my will shall be required to be proved, or for any other cause whatsoever.

My said executors are authorized, in their discretion, to pay any pecuniary legacy given by this will, whether in trust or otherwise, either in cash or in securities to be selected by them out of my estate and at such value as they in their judgment shall determine, or partly in cash and partly in such securities, as they shall think best.

I give unto my said executors full power and authority to sell and convey, or to exchange for other property upon such terms as they shall deem proper, any and all property, whether real or personal, and wherever situated forming part of my estate, other than property hereinbefore specifically bequeathed or devised. If, however,

at the time of my death I shall own any of the capital stock of the Faraday Coal & Coke Company or of the St. Paul Coal Company, I recommend to my executors that these be not sold, and it would be my preference that they be allotted as equitably as may be among the shares into which my residuary estate is directed to be divided. [fol. 158a] I further authorize my said executors, in their discretion, to settle, collect and compound or sell claims or demands belonging to my estate and to accept any composition or security for any debt and to allow such time for payment, with or without taking any security, as to them shall seem proper, and in their discretion to settle, pay, adjust or discharge any claims which may be made against me or my estate.

I declare that no purchaser of any property sold pursuant to any direction or authority in this will contained shall be bound to ascertain or inquire into the necessity or propriety of any such sale, or shall be bound to see to the application of the purchase moneys arising thereon, and that the receipt or receipts in writing of my executors or of any trustees or trustee for the time being acting in the execution of this will for the purchase money of any property sold or for any moneys, stocks, funds, shares or securities which may be paid or transferred to them in pursuance of this my will or of any of the trusts hereof, shall effectually discharge the purchaser or purchasers, or other the persons paying or transferring the same therefrom and from being concerned to see to the application thereof.

Neither of my executors, nor any trustee acting under this will shall be liable for any loss to my estate or to any trust fund unless the same shall occur through his own gross neglect or wilful malfeasance, and my several executors and trustees for the time being shall be respectively chargeable only with such money as they shall respectively actually receive and shall be answerable only for their own acts, receipts and defaults, and not for those of each other nor for any banker, broker or other person with whom or into whose hands any of the trust moneys or securities shall be placed or deposited or come, or for the insufficiency or depreciation of any [fol. 159a] stocks, funds, shares or securities, nor otherwise for involuntary losses, nor for the act or default of any employee or agent selected with reasonable discretion.

No trust company, bank, banker or other financial institution or firm or safe deposit company with which my executors or the trustees of any trust by this will created may place any securities or moneys belonging to my estate or to any trust fund shall be under any obligation or liability whatsoever except to the executors or trustees or trustee making such deposit, nor be in any wise liable to see to the application of any funds or property so entrusted to its custody or possession.

All rights, powers and duties, discretionary or otherwise, herein conferred or imposed upon the trustee or trustees of any trust by this



will created shall devolve upon and be exercised by any successor or successors of such trustee or trustees.

I further authorize my said executors and the trustees or trustee of any trust by this will created, in their discretion, to vote, in person or by proxy, upon all stocks held by them, to unite with other owners of similar property in carrying out any plan for the reorganization of any corporation or company whose securities form a portion of my estate or of any trust fund under this will, to exchange the securities of any corporation for others issued by the same or by any other corporation upon such terms as my said executors or trustees shall deem proper, to assent to the consolidation or merger of any corporation whose securities are held by them with any other corporation, to the lease by such corporation of its property or any portion thereof, to any other corporation, or to the lease by any other corporation of its property to such corporation, and upon any such consolidation, merger, lease or similar arrangement to exchange the securities held by them for other securities issued in connection with [foi. 160a] such arrangement; to pay all such assessments, expenses and sums of money as they may deem expedient for the protection of their interests as holders of the stocks, bonds or other securities of any corporation or company, and generally to exercise in respect to all securities held by them all the same rights and powers as are or may be exercised by persons owning similar property in their own right.

In any case in which my executors or trustees are required under the provisions of this will to divide any portions of my estate or of any trust fund into parts or shares, or to distribute the same, I authorize them in their discretion to make such division or distribution in kind or partly in kind and partly in money, and to that end to allot specific securities or property or any undivided interest therein to any share or shares, and for the purpose of such allotment the judgment of my executors and trustees concerning the propriety thereof and the relative value for the purpose of distribution of the securities or property so allotted shall be final and conclusive upon all persons interested in my estate.

#### Article X

I direct that my executors shall file no inventory of my personal estate with the Register of Wills.

#### Article XI

Any interest in my estate, real or personal, which in any event shall fail to be effectually disposed of by the foregoing provisions of this will, I give, devise and bequeath unto my said daughter Helen C. Frick and her heirs.



## Article XII

It is due to my wife, my daughter and my son that I should express the complete confidence which I feel, that they will cordially co-operate in bringing about the realization of my wishes as expressed in this my will.

[fol. 161a & 162a]

Lastly:

I hereby cancel, revoke and annul all former wills and testaments or codicils by me at any time made, and declare this and this only to be my Last Will and Testament.

In Witness Whereof I have hereunto set my hand and seal at the City of Pittsburgh Penn'a. this 24th day of June in the year one thousand nine hundred and fifteen.

Henry C. Frick. (Seal.)

Signed, sealed, published and declared by the said Henry C. Frick, the above named testator, as and for his Last Will and Testament in the presence of us and each of us, and we, at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses thereto this 24th day of June in the year one thousand nine hundred and fifteen.

Wm. I. Berryman, Jno. A. Irwin, Charles McKenna Lynch.

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EVIDENCE: EXHIBIT "C"

Inventory and appraisement of the goods and chattels, rights and credits, which were of Henry C. Frick, late of Pittsburgh, Allegheny County, Pennsylvania, taken and made in conformity with the following deposition:

[fol. 163a] Tangible Personal Property Located in the State of Massachusetts

This is given for information only, as the property is situate outside the State of Pennsylvania, and is, therefore, not subject to tax.

Ancillary letters of administration with the will annexed have been taken out by the executors in the State of Massachusetts. All of this property is specifically bequeathed in Mr. Frick's will, and was at the time of Mr. Frick's death and still is located in the State of Massachusetts.

Articles of personal property contained in the house at Pride's Crossing, in the City of Beverly, County of Essex, Massachusetts:

Paintings .....	\$190,000.00
Bric-a-brac .....	9,685.00
Bronzes .....	7,000.00

Other contents including furniture and rugs:

First floor.....	69,089.75
Second floor.....	15,590.25
Third floor.....	19,607.25
Fourth floor.....	2,570.75
Basement .....	1,090.75

Miscellaneous:

Furniture covers, etc.....	1,530.00
Books .....	2,165.50
Household supplies.....	100.00

Total house..... \$318,429.25

[fol. 164a] Contents of garage.....	730.75
Contents of cottage.....	1,283.75

Contents of stable:

Stable, first floor.....	\$302.00
Dwelling part, second floor.....	822.00
Storage, hay, etc., second floor.....	2,291.50

Total Stable..... 3,415.50

Farming implements..... 1,675.00

Total ..... \$325,534.25

Tangible Personal Property in the State of New York

This is given for information only, as the property is situate outside the State of Pennsylvania and is, therefore, not subject to tax.

The property included in this schedule was all located in the City of New York in the State of New York at the time of Mr. Frick's death and is still located there. All of said property is specifically bequeathed in Mr. Frick's will and no ancillary letters were taken out by the executors in the State of New York.

Works of Art Contained in the New York Dwelling-house Constituting the "Frick Collection," specifically Bequeathed by Article Four of Mr. Frick's Will.

First Floor:

Rugs, furniture, hangings....	\$1,574,453.00	
[fol. 165a] Assorted Objects d' Art	613,700.00	
Bronzes .....	1,262,775.00	
Porcelains .....	926,300.00	
Paintings and Etchings.....	7,070,000.00	
Limoges Enamels.....	684,550.00	
Books .....	13,049.00	
Total .....		\$12,144,827.00

Second Floor:

Rugs, furniture, hangings....	\$105,088.00	
Assorted Objects d'Art.....	49,925.00	
Porcelains .....	59,315.00	
Paintings and Etchings.....	724,350.00	
Total .....		\$938,678.00

Third Floor:

Rugs, furniture, hangings....	\$3,298.00	
Pictures .....	6,500.00	
Total .....		\$9,798.00

Basement:

Rugs, furniture, hangings....	\$39,028.00	
Pictures .....	60.00	
Total .....		\$39,088.00
		\$13,132,391.00

[fol. 166a-181a] Personal property (Furniture, etc.), Contained in the Fifth Avenue, New York, Residence, Which is not a Part of the "Frick Collection."

First Floor:

Library .....	\$53.00	
Office .....	6,976.00	
Dining Room.....	1,650.00	
Total .....		\$8,679.00

## Second Floor:

Mr. Frick's Bedroom.....	\$6,720.00	
Mr. Frick's Sitting room.....	46,935.90	
Total .....		\$53,655.90
		<hr/> 62,334.90

Household Supplies in the Fifth Avenue Residence	1,000.00
Jewelry .....	3,083.00
Wearing Apparel.....	500.00

Personal property in Garage, 129 West  
Fifty-First Street, New York City:

Automobiles.....	\$8,975.00	
Machinery and Tools.....	1,655.85	
Chauffeurs' Livery.....	270.00	
		<hr/> 10,900.85
Total .....		\$13,210,209.75

[fol. 182a]

## EXHIBIT IN EVIDENCE

## Statutes

## Pennsylvania

## No. 258

An act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death; and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal.

## Article I

## Imposition and Rate of Tax

Section 1. Be it enacted, &c., That a tax shall be, and is hereby, imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere.

(b) When the transfer is by will or intestate laws of real property within this Commonwealth, or of goods, wares, or merchandise within this Commonwealth, or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth, and the decedent was a nonresident of the Commonwealth at the time of his death.

(c) When the transfer is of property made by a resident, or is of real property within this Commonwealth, or of goods, wares, and merchandise within this Commonwealth, or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth, made by a nonresident, by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death.

[fol. 183a] (d) When any person or corporation comes into the possession or enjoyment by a transfer from a resident or nonresident decedent, when such nonresident decedent's property consists of real property within this Commonwealth or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth, of an estate in expectancy of any kind or character which is contingent or defeasibly transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

Section 2. All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the Commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes [fol. 184a] paid on such estate to the Government of the United States or to any other State or Territory.

Section 3. Where there is a transfer of property by a devise, descent, bequest, gift, or grant, liable to the tax hereinbefore imposed, which devise, descent, bequest, gift, or grant is to take effect in possession or to come into actual enjoyment after the expiration of any one or more life-estates or a period of years, the tax on such estate shall not be payable, nor shall interest begin to run thereon, until the person liable for the same shall come into actual possession of such estate by the termination of the estates for life or years. The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner, but the owner may pay the tax at any time prior to his coming into possession. In such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the value of the life-estate or estates for years. The tax on real estate shall remain a lien on the real estate, on which the same is chargeable until paid. The owner of any such personal estate, passing to him from a resident decedent, shall make a full return of the same to the register of wills within one year from the death of the decedent, and within that time enter into security for the payment of the tax, to the satisfaction of such register. In case of failure so to do, the tax shall be immediately payable.

The owner of any such personal estate, passing to him from a non-resident decedent, shall make a full return of the same to the Auditor General within one year from the death of the decedent, and within that time enter into security for the payment of the tax, to the satisfaction of the Auditor General. In case of failure so to do, the tax shall be immediately payable and collectible.

[fol. 185a]

## Article II

### Payment of Tax in Cases of Resident Decedents

Section 10. The register of wills of the county in which letters testamentary or of administration are granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed and hereinbefore subjected to tax. Such appraiser shall make a fair, conscionable appraisement of such estates, and assess and fix the cash value of all annuities and life-estates growing out of said estates, upon which annuities and life estates the tax imposed by this act shall be immediately payable out of the estate at the rate of such valuation.

Section 11. The compensation of such appraisers shall be as follows: namely, For each day during which an appraiser shall actually be engaged in making appraisements of property subject to the tax, he shall receive the sum of five dollars. If it shall be necessary for the appraiser to travel from his place of residence to appraise property subject to the tax, he shall be allowed such actual necessary traveling expenses as he may incur, which expenses shall be itemized in a

sworn statement, to be returned to the register, and subject to the final approval of the Auditor General.

Section 12. Whenever, because of the complicated nature of an estate subject to the payment of such tax, the interest of the Commonwealth shall require the appointment as appraiser of such estate of a person possessed of expert or technical knowledge to ascertain [fol. 186a] the value thereof, reasonable additional compensation shall be allowed such appraiser for the exercise of such expert or technical knowledge. In case where, after the appointment of an appraiser, it shall appear that the proper appraisal of said estate will require the services of a person possessed of expert or technical knowledge whereof the appraiser appointed is not possessed, the appraiser may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisal, and for such services the person so employed shall receive reasonable compensation. In all such cases, the register of wills appointing the appraiser shall certify to the Auditor General that there is an actual necessity for the appointment of an appraiser possessed of expert or technical knowledge, or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge. No person shall be appointed as such expert appraiser, or as expert assistant to the appraiser, until the approval of the Auditor General of said appointment is first obtained; nor shall any payment be made to any appraiser, or to any person employed by him under this section, until an itemized statement of the services performed and the compensation recommended shall have been rendered, under oath or affirmation, to the Auditor General, for his approval, and shall have received the same. No clerk or other person employed in the office of a register of wills shall be appointed as an expert appraiser of an estate subject to the payment of such tax, nor as an expert to assist the appraiser of such estate.

Section 13. Any person not satisfied with any appraisal of the property of a resident decedent may appeal, within thirty days, to the orphans' court, on paying or giving security to pay all costs, [fol. 187a] together with whatever tax shall be fixed by the court. Upon such appeal, the court may determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme or Superior Court.

Section 14. The register of wills shall enter in a book to be provided at the expense of the Commonwealth, which shall be a public record, the returns made by all appraisers appointed by him under the provisions of this act, opening an account in favor of the Commonwealth against each decedent's estate. The register may give certificates of payment of such tax from such record. The register shall transmit to the Auditor General, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes have been paid or remain unpaid, which statement shall be entered by the Auditor General in a book to be kept for that purpose. Whenever any such tax shall have remained



due and unpaid for one year, the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same; whereupon the court, having caused notice to be given to the owner of the real estate charged with the tax, and to such other person as may be interested, shall proceed, according to equity, to make such decrees or orders for the payment of the tax out of such real estate as shall be just and proper.

Section 15. If the register shall discover, upon the transfer of any property of a resident decedent, that any tax imposed by this act has not been paid, the orphans' court may cite the executors or administrators of the decedent whose estate is subject to the tax to file an account, or to appear on a certain day and show cause why the tax should not be paid. When personal service cannot be had, [fol. 188a] notice shall be given for four weeks, once a week, in at least one newspaper published in the county, and in the legal periodical designated by the rules of court of the county for the publication of legal notices. If the tax shall be found to be due, the delinquent shall pay the tax and costs. The Auditor General, in the settlement of accounts of any register, may allow him costs of advertising and other reasonable fees and expenses incurred in the collection of the tax.

Section 16. The executor or administrator, or other trustee, paying any legacy or share in the distribution of any estate of a resident decedent subject to the said tax, shall deduct therefrom at the rate of two per centum upon the whole legacy or sum paid to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and upon the whole legacy from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such illegitimate child, his wife, or widow, or from an illegitimate child to his mother; and at the rate of five per centum upon the whole legacy or sum paid to or for the use of any other person or persons or bodies corporate or politic; or if not money, he shall demand payment of a sum to be computed at the same rate upon the appraised value thereof. No executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed subject to tax except on the payment into his hands of a sum computed on its value as aforesaid. In case of neglect or refusal on the part of such legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, [fol. 189a] shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law. Every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share for the use of the Commonwealth shall be paid by him without delay.

Section 17. Whenever any real estate of which any resident decedent may die siezed shall be subject to the tax, the executors and administrators shall give information thereof to the register of the county where administration has been granted, within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. The owners of such estate, immediately upon its vesting, shall give information thereof to the register having jurisdiction of the granting of administration.

Section 18. Any executor or administrator, on the payment of said tax, shall take duplicate receipts from the register, both of which shall be forwarded forthwith to the Auditor General, who shall charge the register receiving the money with the amount, and seal with the seal of his office and countersign the original receipt, and transmit it to the executor or administrator; whereupon it shall be a proper voucher in the settlement of the estate. In no event shall an executor or administrator be entitled to a credit in his account by the register unless the receipt is so sealed and countersigned by the Auditor General.

Section 19. When a legacy subject to tax under this act is given to any person for life, or for a term of years, or any other limited [fol. 190a] period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but, if not money, application shall be made to the orphans' court to make apportionment, if the case require it, of the sum to be paid by such legatees and for such further order relative thereto as equity shall require.

Whenever any such legacy shall be charged upon or payable out of real estate, the heirs or devisee, before paying the same, shall deduct therefrom at the rates aforesaid, and pay the amount so deducted to the executor, and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans' court in the same manner as the payment of such legacy may be enforced.

Section 20. Whenever debts shall be proved against the estate of a resident decedent after distribution of legacies from which the tax has been deducted in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the tax has not been paid into the State or county treasury, or, by the county treasurer, if it has been so paid.

Section 21. The registers of wills, upon their filing with the Auditor General the bond hereinafter required, shall be the agents of the Commonwealth for the collection of the said tax in the case of resident decedents. For services rendered in collecting and paying over the same, they shall be allowed to retain for their own use, upon the gross amount collected during any year, five per centum upon the tax

collected, if such tax shall amount to a sum of fifty thousand [fol. 191a] (\$50,000) dollars or less; three per centum on the amounts collected in excess of fifty thousand (\$50,000) dollars and not exceeding one hundred thousand (\$100,000) dollars; one per centum on the amounts collected in excess of one hundred thousand (\$100,000) dollars and not over two hundred thousand (\$200,000) dollars; and one-half of one per centum on the amounts collected in excess of two hundred thousand (\$200,000) dollars and not over one million (\$1,000,000) dollars; and one-quarter of one per centum on the amounts collected in excess of one million (\$1,000,000) dollars.

Section 22. Each register shall give bond to the Commonwealth, in such penal sum as the orphans' court may direct, with two or more sufficient sureties, for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received. This bond, when executed and approved, shall be forwarded to the Auditor General.

Until such bond and security be given, the said tax shall be collected by the county treasurer. In such cases all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer.

Section 23. Each register of wills shall, on the first Monday of each month, make return to the Auditor General, and return and payment to the State Treasurer, of all taxes imposed and received under this act, stating for what estate paid upon. All taxes collected by him, and not paid over within one month after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

[fol. 192a]

### Article III

#### Payment of Tax in Cases of Nonresident Decedents

Section 25. Whenever the transfer is of property within the Commonwealth from a decedent who was a nonresident of the Commonwealth at the time of his death, the Auditor General, whenever occasion may require, on the application of any interested party or upon his own motion, shall appoint an appraiser to appraise the value of such property hereinbefore subjected to tax. Every such appraiser shall forthwith give notice by mail, to such persons as the Auditor General shall direct, of the time and place when and where he will appraise such property. He shall, at such time and place, make a fair, conscionable appraisement of said property, and assess and fix the cash value of all annuities and life-estates growing out of said estates, upon which annuities and life-estates the tax imposed by this act shall be immediately payable out of the estate, and he shall make report thereof and of such value in writing to the said Auditor General, which report shall be filed in the office of the Auditor General and the Auditor General shall immediately give notice thereof by mail to all parties known by him to be interested therein.

Section 26. Whenever the interest of the Commonwealth may require it, the Auditor General is hereby authorized to appoint such additional appraisers or employ such expert services as he may deem best to appraise the property of any nonresident decedent subject to the tax hereinbefore imposed. The compensation of all appraisers appointed, and of all persons employed by the Auditor General in making such appraisement, shall be fixed by him, and, together with all necessary expenses incurred by them in the performance of [fol. 193a] their duties, shall be paid out of any unexpended funds appropriated to the department of the Auditor General, upon his warrant.

Section 27. Any person not satisfied with such appraisement as made by an appraiser appointed by the Auditor General may appeal, within thirty days, to the court of common pleas of Dauphin County, on paying or giving security to pay all costs, together with whatever tax shall be fixed by the court. Upon such appeal, the court may determine all questions of valuation and the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme or Superior Court.

Section 28. Every corporation or person to whom any property within this Commonwealth passes from a nonresident decedent subject to the tax hereinbefore imposed, or the executor, administrator, trustee of such a decedent, or other party in interest, shall, immediately upon the death of the decedent, give notice to the Auditor General of such property and the location thereof.

Section 29. Whenever any tax imposed by this act upon the transfer of property of a nonresident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same, whereupon the court, having caused notice to be given to the owner of the property subject to the tax, or to the executor, administrator, or trustee of the decedent, and to such other parties as may be interested, shall proceed according to equity to make such decree or order for the payment of the tax out of such property as shall be just and proper.

[fol. 194a] And the Auditor General is hereby further authorized and empowered to bring suit or suits in the name of the Commonwealth of Pennsylvania in any court of this Commonwealth or elsewhere for the recovery of any sum or sums due, owing, or payable, for or on account of any tax imposed by the provisions of this act upon the transfer of property within this Commonwealth of which a nonresident of the Commonwealth may have died seized or possessed, with costs of suit.

Section 30. The Auditor General shall enter in a book, which shall be a public record, the returns made by all appraisers appointed by him to appraise the property of a nonresident decedent within this Commonwealth subject to the tax hereinbefore imposed, opening an

account in favor of the Commonwealth against each said decedent's estate. The Auditor General may give certificates of payment of said tax from said record, and, upon payment thereof, shall give a receipt therefor to the party paying the same.

Section 31. The Auditor General shall collect all the taxes due or owing the Commonwealth on account of the tax upon the transfer of the property of a nonresident decedent as hereinbefore imposed, and shall, on the first Monday of each month, make report to the State Treasurer of all taxes so collected by him under the provisions of this act during the preceding month, stating for what estate paid upon.

Section 32. On the transfer of property in this Commonwealth of a nonresident decedent, if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations who would have been taxable under this act if such decedent had been a resident of this Commonwealth, such property located within this Commonwealth shall be subject to a tax, which said tax shall bear [fol. 195a] the same ratio to the entire tax which the said estate of such decedent would have been subjected to under this act if such nonresident decedent had been a resident of this Commonwealth as such property located in this Commonwealth bears to the entire estate of such nonresident decedent wherever situated: Provided, That nothing in this clause contained shall apply to any specific bequest or devise of property in this Commonwealth.

#### Article IV

##### Provisions Relating to the Collection of the Tax Both in the Case of Resident and Nonresident Decedents

Section 35. No executor, administrator, or trustee of any decedent, resident or nonresident, shall assign or transfer any stock of any corporation of this Commonwealth or of any national banking association located in this Commonwealth, standing in the name of such decedent, or in the joint names of such decedent and one or more other persons, or in trust for a decedent, subject to the tax hereinbefore imposed, until such tax has been paid, unless the Auditor General consents to such transfer prior to such payment in manner hereinafter provided.

Section 36. No corporation of this Commonwealth or national banking association located in this Commonwealth shall transfer any stock of such corporation or of such banking association, standing in the name of a decedent, whether resident or nonresident, or in the joint names of a decedent and one or more persons, or in trust for such decedent, unless the Auditor General has filed with said corporation or national banking association a certificate that the tax imposed by this act on the transfer of such stock has been fully paid, [fol. 196a] or otherwise consents thereto in writing, and it shall be lawful for the Auditor General, either personally or by representative,

to examine the shares of stock of such decedent at the time of such transfer and also the transfer books of said corporation or association showing such transfer. Any such corporation or association making any transfer of the stock standing in the name of a decedent resident or nonresident, or in the joint names of a decedent and one or more other persons, or in trust for such decedent, in violation of the foregoing provisions shall be liable for the payment of the amount of the taxes to which the property so transferred is subject under the provisions of this act, and, in addition thereto, to a penalty of one thousand dollars, which liability for such tax and interest or the penalty above prescribed or both shall be enforced in an action of debt in the name of the Commonwealth of Pennsylvania brought by the Auditor General thereof, and the same when recovered shall be paid into the treasury of the Commonwealth of Pennsylvania for the use of the Commonwealth.

Section 37. Whenever the tax imposed by this act upon the transfer of the stock of any corporation of this Commonwealth or national banking association located in this Commonwealth, standing in the name of a decedent, resident or nonresident, or in the joint names of the decedent and one or more persons, or in trust for such decedent, has been paid, it shall be the duty of the Auditor General, upon the request of any interested party or of said corporation or association or upon his own motion, to file with the said corporation or banking association a certificate of such payment, and the Auditor General is hereby further authorized and empowered, in his discretion, to consent to the transfer of such stock prior to the payment of the said taxes whenever he deems such transfer may be so made [fol. 197a] without prejudice or peril to the rights of the Commonwealth.

Section 38. If the tax is paid within three months after the death of the decedent, a discount of five per centum shall be allowed. If the tax is not paid at the end of one year from the death of the decedent, interest shall be charged at the rate of twelve per centum per annum on such tax. Where, because of claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or any part thereof cannot be settled up at the end of the year, interest at the rate of six per centum per annum shall be charged upon the tax arising from the unsettled part thereof, from the end of such year until there be default. Where real or personal estate withheld by reason of litigation, or other cause of delay, in manner aforesaid, from the parties entitled thereto, subject to such tax, has not been productive to the extent of six per centum per annum, the proper parties shall not pay a greater amount as interest to the Commonwealth than they have realized or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

Section 39. The lien of all taxes imposed by this act shall continue until the tax is settled and satisfied, and shall be limited to the property chargeable therewith. All such taxes shall be sued



for within five years after they are due; otherwise, they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate.

Section 40. In all cases where any amount of such tax is paid erroneously, the State Treasurer, on satisfactory proof rendered to him by the register of wills or Auditor General of such erroneous payment, may refund and pay over to the person paying such tax [fol. 198a] the amount erroneously paid. All such applications for the repayment of such tax erroneously paid in the treasury shall be made within two years from the date of payment, except when the estate upon which such tax has been erroneously paid shall have consisted, in whole or in part, of a partnership or other interest of uncertain value, or shall have been involved in litigation by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid, which over-valuation could not have been ascertained within said period of two years; in such case the application for repayment shall be made to the State Treasurer within one year from the termination of such litigation or ascertainment of such overvaluation.

Section 41. Where a testator appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, or appoints them his residuary legatee, and said bequests, devise, or residuary legacy exceeds what would be a fair compensation for their services, such excess shall be subject to the payment of the tax at the rate in each case provided for in this act.

Section 42. It shall be a misdemeanor for an appraiser to take any fee or reward from any executor or administrator, legatee, lineal descendant, or heir, of any decedent, and for any such offense the register or Auditor General, as the case may be, shall dismiss him from such service. Upon conviction of such misdemeanor, such appraiser shall be fined not exceeding five hundred dollars, or imprisonment not exceeding one year, or both.

[fol. 199a]

## Article V

### Definitions and Repeals

Section 45. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean the interest of the testator, intestate, grantor, bargainer, or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee, or vendee, not exempt under the provisions of this act, whether such property be situated within or without this Commonwealth.

The word "transfer," as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution, by statute, descent, devise, bequest, grant, deed, bargain, sale, or gift.



Section 46. The provisions of this act are severable, and, in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the validity of this act.

Section 47. The act, approved May sixth, one thousand eight hundred and eighty-seven, entitled "An act to provide for the better collection of collateral inheritance taxes," and the amendments and supplements thereto; and the act, approved the eleventh day of July, one thousand nine hundred and seventeen, entitled "An act for the imposition and collection of certain inheritance taxes;" and all other acts or parts of acts inconsistent with the provisions of this act, are hereby repealed; but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due, owing, or [fol. 200a] payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights, or privileges acquired by the Commonwealth under said act, approved May sixth, one thousand eight hundred and eighty-seven, entitled "An act to provide for the better collection of collateral inheritance taxes," its amendments and supplements, and the said act, approved the eleventh day of July, one thousand nine hundred and seventeen, entitled "An act for the imposition and collection of certain inheritance taxes," or to relieve any person or corporation from any tax or penalty imposed by said acts.

Approved—The 20th day of June, A. D. 1919.

Wm. C. Sproul.

The foregoing is a true and correct copy of the Act of the General Assembly No. 258.

Cyrus E. Woods, Secretary of the Commonwealth.

[fol. 201a] Extracts from New York State Laws

#### EXHIBIT "1"

"The validity and effect of a testamentary disposition of real property, situated within the state, or of an interest in real property so situated, which would descend to the heir of an estate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death. Whenever a decedent, being a citizen of the United States, wherever resident, shall have declared in his will and testament that he elects that such testamentary disposition shall be construed and

regulated by the laws of this state, the validity and effect of such dispositions shall be determined by such laws."

Decedent Estate Law, Section 47, (Book 13, McKinney's N. Y. Laws, p. 117).

### EXHIBIT "2"

Decedent Estate Law, Section 98 (Book 13, McKinney's N. Y. Laws, p. 144)

"If the deceased died intestate, the surplus of his personal property after payment of debts; and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in manner following:

1. One-third part to the widow, and the residue in equal portions among the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one-half of the whole surplus shall be allotted to the widow, and the other half distributed to the next of kin of the deceased entitled under the provisions of this section.

3. If the deceased leaves a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to one-half of the surplus as above provided, and to the whole of the residue if it does not exceed two thousand dollars; if the residue exceeds that sum, she shall receive in addition to the one-half, two thousand dollars; and the remainder shall be distributed to the brothers and sisters and their representatives.

4. If there be no widow, the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. If there be no widow, and no children, and no representatives of a child, the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives; and if all the brothers and sisters of the intestate be living, the whole [fol. 203a] surplus shall be distributed to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall be distributed such share as would have been distributed to him or her if all the brothers and sisters of the intestate who shall have died leaving issue had been living, and so that there shall be distributed to such descendants in whatever degree, collectively, the share which their parents would have received if living; and the same rule shall prevail as to all direct lineal descend-

ants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

6. If the deceased leave no children and no representatives of them, and no father, and leave a widow and a mother, the half not distributed to the widow shall be distributed in equal shares to his mother and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father and no child or descendant, the father shall take one-half if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representative of a brother or sister, the mother, if there be a widow, shall take one-half; and the whole, if there be no widow.

[fol. 204a] 9. If the deceased was illegitimate and leave a mother, and no child, or descendant, or widow, such mother shall take the whole and shall be entitled to the letters of administration in exclusion of all other persons. If the mother of such deceased be dead, the relatives of deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order.

10. Where the descendants, or next of kin of the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

11. When such descendants or next of kin are of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks, so that those who take in their own rights shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

12. No representation shall be admitted among collaterals after brothers and sisters descendants. This subdivision shall not apply to the estate of a decedent who shall have died prior to May eighteenth, nineteen hundred and five.

13. Relatives of the half-blood shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

14. Descendants and the next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in the lifetime of the deceased, and had survived him.

15. If a woman die, leaving illegitimate children, and no lawful issue, such children inherit her personal property as if legitimate.

15-a. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, then the whole surplus shall be allotted to a surviving child of the husband or wife of the deceased, or if there be more than one, it shall be distributed equally among them. (This subdivision added by L. 1913, ch. 489, in effect May 14, 1913.)

16. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, and no child or children of the husband or wife of the deceased, then the whole surplus shall be distributed equally to and among the next of kin of the husband or wife of deceased, as the case may be, and such next of kin shall be deemed next of kin of the deceased for all the purposes specified in this article or in chapter eighteen of the code of civil procedure; but such surplus shall not, and shall not be construed to, embrace any personal property except such as was received by the deceased from such husband or wife, as the case may be, by will or by virtue of the laws relating to the distribution of the personal property of the deceased person."

[fol. 206a]

#### EXHIBIT "3"

"An executor or administrator duly appointed in any other state, territory or district of the United States or in any foreign country may sue or be sued in any court in this state in his capacity of executor or administrator in like manner and under like restrictions as a nonresident may sue or be sued, if within twenty days after any such executor or administrator shall commence, or appear in, any action or proceeding in any court in this state or within twenty days after he shall be required or directed by summons or otherwise to appear therein, there shall be filed in the office of the clerk of the court, in which such action or proceeding shall be brought or be pending, a copy of the letters testamentary or letters of administration issued to such executor or administrator duly authenticated as prescribed by section forty-five of this chapter; in default whereof all proceedings in such action or proceeding may be stayed until such duly authenticated copy of such letters shall be so filed."

Decedent Estate Law, Section 160 (Book 13 McKinney's N. Y. Laws Supp. 1922, p. 41).

#### EXHIBIT "4"

"No person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more."

Decedent Estate Law, Section 17 (Book 13 McKinney's N. Y. Laws, p. 48).

[fol. 207a]

## EXHIBIT "5"

"Where a will of personal property made by a person who resided without the state at the time of the execution thereof, or at the time of his death, has been admitted to probate or established within the foreign country, or admitted to probate within the state or the territory of the United States, where it was executed, or where the testator resided at the time of his death; the surrogate's court having jurisdiction of the estate, must, upon an application made as prescribed in this article, accompanied by a copy of the will, and of the foreign letters, if any have been issued, authenticated as prescribed in section forty-five of the decedent estate law, record the will and the foreign letters, and issue thereupon ancillary letters testamentary, or ancillary letters of administration with the will annexed, as the case requires."

Parsons' Code Civil Procedure of New York (1920), Section 2629.

## EXHIBIT "6"

"The surrogate's court, or any court of the state, which has jurisdiction of an action to procure an accounting, or a judgment construing the will, may in a proper case, by its judgment or decree, direct a person, to whom ancillary letters are issued as prescribed in this article, to pay, out of the money or the avails of the property, received by him under the ancillary letters, and with which he is chargeable upon his accounting, the debts of the decedent, due to creditors residing within the state; or, if the amount of all the decedent's debts here and elsewhere exceeds the amount of all the [fol. 208a] decedent's personal property applicable thereto, to pay such a sum to each creditor, residing within the state as equals that creditor's share of all the distributable assets, or to distribute the same among the legatees or next of kin, or otherwise dispose of the same, as justice requires."

Parsons' Code Civil Procedure of New York (1920), Section 2635.

## EXHIBIT "7"

"If no person is named as executor in the will, or selected by virtue of a power contained therein; or if, at any time there is no executor, or administrator with the will annexed, qualified to act; the surrogate must, upon the application of a creditor of the decedent, or a person interested in the estate of the decedent, or having a lien upon any real property upon which the decedent's estate has a lien, and upon such notice to the other creditors and persons interested in the estate as the surrogate deems proper, issue letters of administration with the will annexed, as follows:

1. To an executor or administrator of a sole legatee and devisee named in a will or to the executor or administrator of a sole residuary legatee and devisee named in a will.

2. To one or more of the residuary legatees, who are qualified to act as administrators. A corporation which is a residuary legatee shall be qualified to act as such administrator, although not specially authorized by its charter or any provision of law.

[fol. 209a] 3. If there is no such residuary legatee or none who will accept, then to one or more of the principal or specified legatees so qualified.

4. If there is no such legatee or none who will accept, then to the husband, or wife, or to one or more of the next of kin, or to one or more of the heirs or devisees, so qualified.

If any of the above persons who would otherwise be entitled to letters is an infant or an adjudged incompetent, administration may be granted to his guardian or committee as the case may be, unless there is an adult or competent person equally entitled who will accept the same.

5. If there is no qualified person, entitled under the foregoing subdivisions, who will accept, then to the public administrator, and if there be none for the county, to the treasurer of the county or to the petitioner in the discretion of the surrogate, and if neither will accept, to any creditor or competent person designated by the surrogate.

Except as to the right of priority as provided in this section, the provisions of section 2588 of this chapter apply to an application for letters of administration with the will annexed."

Parsons' Code Civil Procedure of New York (1920), Section 2603.

#### EXHIBIT "8"

Tax Law, Section 220 (Book 59, McKinney's N. Y. Laws, p. 278)

"A tax shall be and is hereby imposed upon the transfer of any property real or personal, or of any interest therein or income there- [fol. 210a] from in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed thereof while a resident of the State.

2. When the transfer is by will or intestate law of real property within this State, or of goods, wares and merchandise within this State or of shares of stock of corporations organized under the laws of this State, or of national banking associations located in this State, and the decedent was a non-resident of the State at the time of his death; or of property evidenced by or consisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation,

joint stock company or association wherever incorporated or organized except the shares of stock of a foreign corporation, joint stock company or association, or the bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association, domestic or foreign, constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this State, and the property represented by such shares of stock, bonds, notes, mortgages or other evidences of interest, consists of real property which is located wholly or partly, within the State of New York, or of an interest in any partnership business conducted, wholly or partly, within the State of New York, and if not [fol. 211a] wholly within the State of New York then in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the State of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a non-resident of the State at the time of his death; or when the transfer is by will or intestate law of capital invested in business in the State by a non-resident of the State doing business in the State either as principal or partner.

3. Whenever the property of a resident decedent, or the property of a non-resident decedent within this State, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations organized under the laws of this State or of national banking associations located in this State, made by a non-resident; or of property evidenced by or consisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company, or association wherever incorporated or organized, except the shares [fol. 212a] of stock of a foreign corporation, joint stock company or association, or the bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association, domestic or foreign, constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this State, and the property represented by such shares of stock, bonds, notes, mortgages or other evidences of interest consists of real property which is located, wholly or partly within the State of New York, or of an interest in any partnership business



conducted, wholly or partly within the State of New York, and if not wholly within the State of New York then in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the State of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership made by a non-resident or capital invested in business in the State by a non-resident of the State doing business in the State either as principal or partner by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

[fol. 213a] 6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property, shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.

8. The tax imposed hereby shall be upon the clear market value of such property at the rates hereinafter prescribed.

Tax Law, Section 234 (Book 59, McKinney's N. Y. Laws, Supp. 1922, p. 79)

16. In each county of the state having a population of over one million, and in each county of the state having a population of over [fol. 214a] three hundred thousand inhabitants, included in or adjoining a city containing a population of over one million inhabitants,

the surrogate or surrogates shall each annually receive for compensation for ministerial services rendered under this article the sum of twenty-five hundred dollars in addition to the salary or compensation paid to such surrogate by the county, but such salary and compensation shall not together exceed the entire salary and compensation paid to a justice of the supreme court in the judicial district in which the county is included. The additional compensation provided for by this subdivision shall be payable in the same manner as salaries and expenses under this section."

#### EXHIBIT "9"

"Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, library, charitable, missionary, benevolent, hospital or infirmity corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, or real property to a municipal corporation in trust for a specific public purpose, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental [fol. 215a] improvement of men or women or for scientific, literary, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. There shall also be exempted from and not subject to the provisions of this article all property or any beneficial interest therein so transferred to any father, mother, husband, wife, widow or child of the decedent, grantor, donor or vendor if the amount of the transfers to such father, mother, husband, wife, widow or child is the sum of five thousand dollars or less; but if the amount so transferred to any father, mother, husband, wife, widow or child is over five thousand dollars, the excess above these amounts, respectively, shall be taxable at the rates set forth in the next section."

Tex Law, Section 221 (Book 59, McKinney's N. Y. Laws, p. 301).

1. "Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five thousand dollars, to any father, mother, husband, wife, or child of the decedent, grantor, donor or vendor, or to any child adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars to any lineal descendant of the decedent, grantor, donor or vendor, born in lawful wedlock, the tax on such transfers shall be at the rate of,

One per centum on any amount up to and including the sum of twenty-five thousand dollars;

Two per centum on the next seventy-five thousand dollars or any part thereof;

Three per centum on the next one hundred thousand dollars or any part thereof;

Four per centum on the amount representing the balance of each individual transfer.

2. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars or more, to a brother, sister, wife or widow of a son, or the husband of a daughter of the decedent, grantor, donor or vendor, or to any child to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent provided, however, such relationship began at or before the child's fifteenth birthday and was continuous [fol. 217a] tinuous for said ten years thereafter, the tax on such transfers shall be at the rate of,

Two per centum on any amount up to and including the sum of twenty-five thousand dollars,

Three per centum on the next seventy-five thousand dollars or any part thereof;

Four per centum on the next one hundred thousand dollars or any part thereof;

Five per centum on the amount representing the balance of each individual transfer.

3. Upon all transfers taxable under this article of property or any beneficial interest therein of an amount in excess of the value of five hundred dollars, to any person or corporation other than those enumerated in paragraphs one and two of this section the tax on such transfers shall be at the rate of,

Five per centum on any amount up to and including the sum of twenty-five thousand dollars;

Six per centum on the next seventy-five thousand dollars or any part thereof;

Seven per centum on the next one hundred thousand dollars or any part thereof;

Eight per centum on the amount representing the balance of each individual transfer."

Tax Law, Section 221-a (Book 59, McKinney's N. Y. Laws, p. 306.)

#### EXHIBIT "11"

"A transfer of pictures, statuary, works of art, antiques, books, manuscripts or other similar personal property shall be exempted from and not subject to the provisions of this article, if within [fol. 218a] two years after such transfer the person to whom such transfer is made shall present the same to the state, or to a municipal corporation of the state for educational, scientific, literary, library, or historical purposes; and if the tax thereon shall have been theretofore paid the amount thereof shall be refunded in accordance with the provisions of this article."

Tax Law, Section 221-c (Book 59, McKinney's N. Y. Laws, p. 311).

#### EXHIBIT "12"

"Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific [fol. 219a] legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require."

Tax Law, Section 224 (Book 59, McKinney's N. Y. Laws, p. 314).

[fol. 220a] Extracts from the General Laws of the Commonwealth of Massachusetts Enacted December 22, 1920, to Take Effect January 1, 1921.

## Chapter 65

### Taxation of Legacies and Successions

Section 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of the commonwealth or not, which shall pass by will or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt from taxation, or for or upon trust for any charitable purposes to be carried out within the commonwealth or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rate fixed by the following table:

(Here follows table).

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[fol. 221a] "Section 4. When the personal estate passing under section one from any person not an inhabitant of the commonwealth consists in whole or in part of shares in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this commonwealth and also of some other state or country, so much only of each share as is proportional to the part of such company's line lying within this commonwealth shall be considered as property of such person within the jurisdiction of the commonwealth for the purposes of this chapter."

"Section 5. Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the

law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

"Section 8. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank situated in this commonwealth, or in any corporation organized under the laws of this commonwealth, owned by a deceased non-resident at the date of his death and liable to a tax under this chapter, the tax shall be paid to the state treasurer at the time of such assignment or transfer, and if [fol. 222a] it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank situated in this commonwealth or a corporation organized under the laws of this commonwealth which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by this chapter have been paid, shall be liable for such tax in an action of contract brought by the state treasurer."

"Section 10. Securities or assets belonging to the estate of a deceased non-resident shall not be delivered or transferred to a foreign executor, administrator or legal representative of such decedent, unless such executor, administrator or legal representative has been licensed to receive said securities or assets under section three of chapter two hundred and four. License to receive, sell, transfer or convey securities or assets under said section shall not be granted unless it appears to the judge of the probate court that all taxes imposed by this chapter have been paid or secured according to law. Any person or corporation that delivers or transfers any securities or assets belonging to the estate of a non-resident decedent before all taxes imposed thereon by this chapter have been so paid or secured shall be liable for such tax in an action of contract brought by the state treasurer."

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[fol. 223a]

## Chapter 204

General Provisions Relative to Sales, Mortgages, Releases, Compromises, etc., by Executors, etc.

"Section 3. An executor, administrator, guardian, conservator or trustee duly appointed in another state or in a foreign country and duly qualified and acting, who may be entitled to any personal property, situated in the commonwealth, may file an authenticated copy of his appointment in the probate court for any county where there is real estate of his trust, or, if there is no such real estate, in any county where there is personal property of his trust, and may upon petition to said court, after such notice to creditors and all persons interested as the court may order, be licensed to receive or to sell by public or private sale, upon such terms and to such person or persons as he shall think fit, or otherwise to dispose of, and to transfer and

convey, shares in a corporation or other personal property, if the court finds that there is no executor, administrator, guardian, conservator or trustee appointed in the commonwealth who is authorized so to receive and dispose of such shares or estate, and that such foreign executor, administrator, guardian, conservator or trustee will be liable, upon and after such receipt or sale, to account for such shares "or estate" or for the proceeds thereof, in the state or country where appointed; and that no person resident in this commonwealth and interested as a creditor or otherwise objects to the granting of such license or appears prejudiced thereby; but no such license shall be granted to a foreign executor or administrator until the expiration of six months after the death of his testator or intestate. The commissioner of corporations and taxation shall be made a party to any [fol. 224a] petition by a foreign executor, administrator or trustee under this section, and shall be given fourteen days' notice of the same."

\* \* \* \* \*

## Chapter 191

### Relating to Wills

"Section 5. A last will and testament executed in the mode prescribed by the law, either of the place where the will is executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this commonwealth; provided, that such last will and testament is in writing and subscribed by the testator."

## Chapter 192

### Relating to Probate of Wills and Appointment of Executors

"Section 9. A person interested in a will which has been proved and allowed in any other of the United States or in a foreign country according to the laws of such state or country, or in a will which, by the laws of the state or country in which it was made, is valid without probate, may produce to the probate court in any county where there is any property, real or personal, on which such will may operate, a copy of such will and of the probate thereof, duly authenticated, or, if such will is valid without probate as aforesaid, a copy of the will or of the official record thereof duly authenticated by the proper [fol. 225a] officer having custody of such will or record in such state or country; and the court shall thereupon assign a time and place for a hearing and cause notice thereof to be given to all persons interested by publication in a newspaper three weeks successively, the first publication to be thirty days at least before the time assigned for the hearing."

"Section 10. If at such hearing the court finds from the copies before it and any additional proof as to the authenticity and execu-



tion of the will that the instrument ought to be allowed in this commonwealth as the last will of the deceased, it shall order the copy to be filed and recorded, and the will shall then have the same effect as if it had been originally proved and allowed in the probate court in the usual manner."

"Section 11. After allowing a will under the two preceding sections, the probate court shall grant letters testamentary on such will or letters of administration with the will annexed, and shall proceed in the settlement of the estate which may be found in this commonwealth in the manner provided in chapter one hundred and ninety-nine relative to such estates."

\* \* \* \* \*

## Chapter 194

### Relating to Public Administrators

"Section 4. A public administrator shall, except as hereinafter provided, take out letters of administration and faithfully administer upon the estates of persons who die intestate within his county or elsewhere, leaving property in his county to be administered, if there [fol. 226a] is no known husband, widow or heir of such deceased living in the commonwealth at the time of filing the petition. The state treasurer shall be made a party to a petition for administration by a public administrator, and shall be given due notice of all subsequent proceedings. He shall, except as otherwise provided in this chapter, administer estates and render accounts in the same manner as other administrators."

## Chapter 195

### General Provisions Relative to Executors and Administrators

"Section 8. An executor or administrator who is appointed in, but resides out of, the commonwealth shall not enter upon the duties of his trust nor be entitled to receive his letter of appointment until he shall, by a writing filed in the registry of probate for the county where he is appointed, have appointed an agent residing in the commonwealth, and, by such writing, shall have agreed that the service of any legal process against him as such executor or administrator, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such executor or administrator, shall, if made on said agent, have like effect as if made on him personally within the commonwealth, and such service shall have such effect. Said writing and also the notice of appointment of such executor or administrator shall state the name and address of the agent. An executor or administrator who, after his appointment, removes from, [fol. 227a] and resides without, the commonwealth shall so appoint a like agent."

\* \* \* \* \*

## Chapter 199

## Settlement of Estates of Deceased Non-residents

"Section 1. If administration is taken in this commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of this commonwealth, and his personal property shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant."

"Section 2. After the payment of all debts for which such estate is liable in this commonwealth, the residue of the personal property may be distributed and disposed of, as provided in the preceding section, by the probate court; or, in the discretion of the court, it may be transmitted to the executor or administrator, if any, in the state or country of which the deceased was an inhabitant, to be there disposed of according to the laws thereof. But nothing herein shall be construed to prevent the distribution or transmission of part of the personal property of an estate in process of settlement when it can be done without detriment to the estate or prejudice to the creditors."

"Section 3. If such person dies insolvent, his estate found in this commonwealth shall, as far as practicable, be so disposed of that all his creditors here and elsewhere may receive equal proportions of their respective debts."

[fol. 228a] "Section 4. The estate shall not be transmitted to the foreign executor or administrator until all the creditors who are citizens of this commonwealth have received the proportion which would be due to them if the whole estate of the deceased, wherever found, which is applicable to the payment of common creditors were divided without preference among all the creditors in proportion to their respective debts; and no creditor not a citizen of this commonwealth shall be paid out of the assets found here until all those who are such citizens have received the proportion provided in the preceding section."

"Section 5. If there is a residue after such payment to the citizens of this commonwealth, it may be paid to any other creditors who have duly proved their debts here, in proportion to the amount due to each of them, but no one shall receive more than would be due to him if the whole estate were divided ratably among all the creditors as before provided. The remainder may be transmitted to the foreign executor or administrator; or if there is none, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all creditors, both citizens and others, who have proved their debts in this commonwealth."

[fol. 229] DOCKET ENTRIES IN SUPREME COURT OF PENNSYLVANIA  
OCTOBER TERM, 1923.

No. 42

In re Estate of HENRY C. FRICK, Deceased; Appeal of HELEN C. FRICK

Appeal from Decree of Orphans' Court of Allegheny County, at  
No. 476, December Term, 1920

December 13, 1922.—Appeal and affidavit filed and writ exit.

December 18, 1922.—Petition by appellant for advancement to  
Eastern District with joinder of appellee filed.

IN THE SUPREME COURT OF PENNSYLVANIA

ORDER SETTING CAUSE FOR HEARING

Dec. 21, 1922.—Granted. Case to be heard on January 12, 1923.  
R. v M., C. J.

December 27, 1922.—Transferred to Eastern District.

January 9, 1923.—Assignments filed.

January 12, 1923.—Argued.

DECISION

April 23, 1923.—The judgment of the court below is reversed, in  
so far as relates to the legacy of \$2,000,000 for the maintenance of  
the park given to the city of Pittsburgh, and is affirmed as respects  
all the other questions raised on these six appeals without prejudice,  
however, to the rights of the parties in interest to apply for a re-  
opening of the decree, so far as it includes the value of the Fragonard  
Panels and the Boucher Panels, in determining the amount of the  
tax; the costs on all the appeals to be paid by the estate.

Simpson, J.

Frazer, J., files a dissenting opinion.

ORDER

And Now, to wit, May 14, 1923, it is ordered that the Prothonotary  
of this Court for the Western District thereof hold the record in the  
above entitled cases for sixty (60) days from this date within which  
time the respective appellants may make application for writs of  
error from the Supreme Court of the United States.

R. v M., C. J.

[fol. 230] June 23, 1923.—Petition by appellant for modification  
of judgment of Supreme Court by eliminating the following words:  
"without prejudice, however, to the rights of the parties in interest to

apply for a reopening of the decree, so far as it includes the value of the Fragonard Panels, and the Boucher Panels, in determining the amount of the tax."

#### ORDER

June 23, 1923.—Petition granted and decree modified as therein provided.

Per Curiam. S.

June 23, 1923.—Motion for reargument and petition for allowance of writ of error from Supreme Court of the United States filed.

June 23, 1923.—Assignment of errors and prayer for reversal filed.

#### ORDER OVERRULING MOTION FOR REARGUMENT, ETC.

And Now, to wit June 23rd, 1923, upon consideration of the petition of Adelaide H. C. Frick, et al. for the allowance of writs of error from the Supreme Court of the United States it is ordered, adjudged and decreed as follows:

First. That the motion for reargument made in these causes be and the same is hereby overruled and dismissed.

Second. That the prayer of said petition be and the same is hereby granted and that a writ of error issue as prayed for and that the said petitioners have leave to bring up for review before the Supreme Court of the United States the final judgment of this Court heretofore entered in said causes.

Robert von Moschzisker, Chief Justice.

June 25, 1923.—Bond in sum of \$50,000.00 with American Surety Company of New York as surety and approved by the Chief Justice of the Supreme Court of Pennsylvania filed.

June 25, 1923.—Stipulation as to portions of record to be incorporated in authenticated transcript of record filed.

July 10, 1923.—Writ of error from Supreme Court of the United States to the Supreme Court of Pennsylvania dated June 25, 1923, with acceptance of service by David A. Reed, attorney for Defendant in Error, dated July 9, 1923, and copy of writ of error filed.

July 10, 1923.—Citation issued by Robert von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania, dated June 25, 1923, [fol. 231] with acceptance of service by David A. Reed, attorney for Defendant in Error, dated July 9, 1923, filed.

July 13, 1923.—Authenticated transcript of record, petition for allowance of writ of error and order of allowance, assignment of errors and prayer for reversal, original writ of error with acceptance of service indorsed, original citation with acceptance of service endorsed, copy of bond sur writ of error with stipulation as to portions of record to be incorporated in authenticated transcript of record, delivered to George B. Gordon, Esq., of counsel for Plaintiff in Error, for transmission to the Supreme Court of the United States.

For Appellee: George E. Alter, Attorney General, David A. Reed.  
For Appellant: George Wharton Pepper, George B. Gordon.

[fol. 232] IN THE SUPREME COURT OF PENNSYLVANIA FOR THE  
WESTERN DISTRICT

[Title omitted]

Six Appeals from Decrees of the Orphans' Court of Allegheny County  
as of December Term, 1920, No. 476, and of March Term, 1922,  
No. 171

OPINION OF THE COURT

SIMPSON, J.:

We are asked by these six appeals to review the action of the court below in determining the amount of inheritance tax due by the estate of Henry C. Frick, deceased, to this Commonwealth, of which he was a resident, and in which he was domiciled when he died [fol. 233] on December 21st, [2nd] 1919. A number of points are raised; some concern the interpretation of the Constitution of the United States or of this State; others the construction of our Inheritance Tax Act of June 20, 1919, P. L. 521; and still others the meaning of testator's will. The argument took a wide range, possibly because of a belief regarding the importance of the question raised, due partly to the large amounts involved; and perhaps also because of a conviction, in which the writer shares, that the State should have as part of its public policy, a refusal to tax any gift for a "purely public charity," since no valid reason can be given for taxing the public for the benefit of the public. Whatever appellants' reasons may be, however, we are compelled to follow along the lines of the able arguments presented, though this results in what would ordinarily be considered an unnecessarily long opinion.

By testator's will (so far as it need be considered here), he gave to certain trustees "all the books, pictures, paintings, \* \* \* Antique or artistic furniture" \* \* \* contained in his dwelling house in New York City, to be held by them until a corporation, to be known as "The Frick Collection," should be formed, under the laws of the State of New York, when these articles should be transferred to it; he gave the rest of his personal property in said dwelling house, and also in his residence at Pride's Crossing, Massachusetts, to his wife "excepting, however, from this bequest, all articles of personal property" given to the trustees and corporation above stated; he gave to the city of Pittsburgh a tract of 151 acres of land "as a public park," and to the Union Trust Company of that City, the sum of \$2,000,000, the income therefrom to be used [fol. 234] in "maintaining, improving, embellishing and adding to the said park, and keeping the same in proper condition;" and he directed "that all inheritance, legacy, succession or similar duties or taxes, which shall become payable in respect to any property or interest passing under my will \* \* \* shall be paid out of the capital of my residuary estate," which, as found by the court below, amounted to \$24,704,126.55.

After the probate of the will, the executors paid to the United States the sum of \$6,338,898.68 being the Federal Estate Tax upon

the property left by decedent; to various States and the Province of Quebec, the sum of \$1,084,459.42, being the inheritance taxes chargeable under their laws; to the State of New York the sum of \$131,000; and to this Commonwealth the sum of \$1,978,949.71, the inheritance tax which the estate admitted to be due. The governments specified do not concede the first three of these payments to be sufficient in amount; whether or not the last one is, is the question to be decided in this opinion.

By proper proceedings before the register of wills of Allegheny County, the amount of the tax due this State was found to be largely in excess of the sum already paid, whereupon the executors and one of the residuary legatees appealed to the orphans' court of the county, which determined a smaller amount was due, and later, on an adjudication of the executors' account, awarded to the Commonwealth the additional sum of \$1,188,248.16. It was reached by assessing the proper percentages on the total value of the real estate in Pennsylvania, and of the personalty wherever found (the valuations being agreed upon); the \$5,156,625.00 worth of realty located elsewhere not being considered or included.

[fol. 235] From these two decrees the present appeals were taken; two of them by the Commonwealth, alleging additional taxes should have been assessed, and the other four by the executors and a residuary legatee, averring that too much was awarded. No claim was made upon the fund except by the State and the legatees; no creditor asked that distribution be delayed or a fund set apart to await a future adjudication of his claim; and no refunding bonds were required of the distributees, to whom the balance in the account was awarded. Hence, even if there are unpaid creditors, who hereafter present and prove their claims, they cannot, under our statutes, successfully maintain suits against the distributees or the executors, to obtain a refund of the sums paid by the latter to the former, on the faith of the court's decree, but can only have recovery against assets not appearing in the present account: Sections 49 (b) and 50 (a) and (b), Fiduciaries Act of June 7, 1917, P. L. 447, 515, 516-7.

The basic claim of the executors and residuary legatee being that the award is excessive, by reason of the fact that the court below improperly included, in the total valuation of the estate, certain of the assets left by testator, and mistakenly refused to allow certain credits against that valuation, in the natural order of consideration our first inquiry is: What does the Act of June 20, 1919, P. L. 521, under which the proceedings were had, provide regarding the tax and how it is to be calculated? Section 2 thereof provides, *inter alia*, that "In ascertaining the clear value of such (decedent's) estates, the only deductions to be allowed from the gross value of such estates shall be the debts of the decedent and the expenses of the [fol. 236] administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or territory." And section 10 says: "The register of wills of the county, in which letters testamentary or of administration were

granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed." \* \* \*

It is clear from these sections that the tax is to be levied upon "the clear value" of the entire estate (from which has been excluded, however, real estate located outside of Pennsylvania), after deducting only "the debts of the decedent and the expenses of the administration of such estates." The appraisal to be made is not of the legacies or devises but of the whole estate of a decedent; the debts and expenses of administration are not to be deducted from any particular gift or gifts, but from the whole estate, and the taxes paid to the United States or to any other State or territory, if permitted to be deducted, would have been from the whole estate. We therefore conclude that it is the entire value of the estate, less the credits specified, which forms the basis of the tax, and not the amounts received by the particular legatees; hence, as stated in *Knowlton vs. Moore*, 178 U. S., 41, that which the State "taxes is not the interest to which some person (or many) succeeds on a death, but the interest which ceased by reason of the death." Since this is the true construction of the Act, much of the argument made by these appellants, founded as it is upon the contention that the tax is levied only upon the particular [fol. 237] gifts, when and as received, becomes ineffective because it has no relation to the actual status.

Basing their elaborate argument largely on their erroneous construction of the Act as last stated, the executors and residuary legatee who appeal, ask us to ignore the clear and unambiguous language of section 2, above quoted, and to decide that the court below erred "In ascertaining the clear value" of the estate, because it did not deduct from its "gross value" (a) The amount paid the Government for the Federal Estate Tax; (b) The amounts paid other States and the Province of Quebec for their inheritance taxes on decedent's real and personal property there located; and (c) The inheritance tax payable to this State. *Kirkpatrick's Estate*, 275 Pa., 271, is an express authority against the first of these claims; in principle it also decides the others adversely to these appellants. In deference to the able argument made, however, the supposedly new points presented will be briefly considered aside from that decision.

In support of their contention upon these points, they urge that refusal to allow those items to be deducted "adds the Federal tax, the tax paid to the other States," and that paid to this State, to the total valuation to which the tax rate is applied; this is erroneous, however, it simply refuses to allow those sums to be deducted from the "gross value of such estates" "in ascertaining the clear value" thereof, exactly as does the Federal Estate Tax Act (*New York Trust Co. vs. Eisner*, 256 U. S., 345, 349, 350), and many of the inheritance tax laws of other States. No valid reason is given why this may not be done. On the contrary, as stated in the last cited case, where "the [fol. 238] tax attaches to the estate before distribution,—if it is a tax on the right to transmit, or on the transmission at its beginning—



obviously it attaches to the whole estate, except so far as the statute sets a limit."

Recognizing that their contention now being considered is in direct antagonism to the express language of the statute, these appellants in effect ask us to ignore this language, and from isolated phrases and words in the statute to reach an opposite conclusion, partially because of general expressions found in our opinions in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271, —though this question was not directly raised in either of them— apparently forgetting the basic rule that "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated": *Cohens vs. Virginia*, 6 Wheaton, 264, 397, per Marshall, C. J., *O'Malley vs. O'Malley*, 272 Pa., 536. Of course we cannot permit isolated expressions in a statute, or in any opinion of ours, to override the express language of the Act being construed.

[fol. 239] It is further urged that there are constitutional objections to the provisions of the statute, if the deductions above referred to are not made. The only section of the Constitution of this State, which is supposed to affect the matter, is article IX, section 1, which provides that "all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." This, however, is not infringed, since the estates of all decedents are subjected to a uniform inheritance tax in all parts of the Commonwealth; and hence we turn to the provisions of the Federal Constitution, alleged to have been violated by the decree below, to see if they or any of them stand in the way of enforcing the statute as written.

The first claim regarding this is that it is "repugnant to clause 1 of section 8 of Article I of the Constitution of the United States, in that it interferes with the power of Congress to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare, of the United States." This is a veiled attack upon our dual form of government, and, in its ultimate analysis, would appear to be an attempt to deny to the States any right to exercise their taxing power upon subjects which the Federal Government may also tax. It needs no argument to show the error of such a contention. Moreover, there cannot be found anywhere within the four corners of the Act, in the practice under it, or in the decree below, the slightest evidence of a desire to interfere with the taxing powers of the United States.

It is further said that if the taxes paid the Government are not deducted our statute will be "repugnant \* \* \* also to clause 2 of Article VI of the Constitution of the United States, in that it de-

[fol. 240] nies that the said Constitution and the laws of the United States made in pursuance thereof \* \* \* are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." In this day probably no one would deny the supremacy claimed; this court never has. The principle contended for is wholly inapplicable, however. Given the fact, that a State may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plumber vs. Coler*, 178 U. S., 115; *Orr vs. Gilman*, 183 U. S., 278), it necessarily follows that, in determining the way in which this tax shall be computed, it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other States. "The right to dispose of one's property by will, and the right to have it disposed of by the law, after decease, is created by statute, and therefore the State may impose such conditions upon the exercise of this right as it may determine" (*Banker's Trust Co. vs. Blodget*, decided by the Supreme Court of the United States January 22, 1923, and not yet officially reported); hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, "The power of taxation, with its accessorial sanctions, is a power of government, and all property is subject to it." If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her.

It is also contended that the refusal to make these deductions, and [fol. 241] the inclusion of the value of the tangible personalty, located elsewhere than in Pennsylvania (which will be further considered hereafter), made the decree below "repugnant \* \* \* also to clause 1 of the 14th Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws." This contention is fully answered by what is said in *Keeney vs. New York*, 222 U. S., 525, 535: "The 14th Amendment does not diminish the taxing power of the State, but only requires that, in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the State of the Power to select the subjects of taxation. \* \* \* There can be no arbitrary or unreasonable discrimination;" but this can only arise (*Dane vs. Jackson*, 256 U. S., 589, 599) where the State tax law "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—'to spoliation under the guise of exerting the power of taxation,' " a situation not alleged to exist under our statute. If, however, we pass to separately

consider the two branches of the Amendment, these appellants are not helped.

Upon the question of "due process of law," we have not been favored with a single specification regarding either the Act, or the practice under it. The property being distributed on this proceeding is all in this State; appellants are our citizens and duly appeared and [fol. 242] contested the claim of the Commonwealth; all the facts are agreed to; the law applicable thereto has been passed upon by the Orphans' court, all of whose judges are learned in the law, is now under review by this court, and, judging from the record, and the suggestion in the brief, will subsequently be scrutinized by the Supreme Court of the United States. Wherein then have these appellants been deprived of "due process of law?" We agree that "A tax can only be imposed by the State when it has either jurisdiction over a person or jurisdiction over his property;" here it has jurisdiction over both, decedent having been and appellants being domiciled in the State, the latter appearing to the action, all the property now being distributed being within the State, and a valid State statute lawfully imposing the tax. Under such circumstances, it is only when the State does not "provide a fair opportunity for submitting the issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts," that the conclusion reached "is void because in conflict with the due process clause." *Ohio Valley Water Company vs. Ben Avon Borough*, 253 U. S., 287, 289.

Nor is there any definite allegation as to how the estate is deprived of the equal protection of the laws, though this is asserted over and over again, not only in regard to the refusal to allow the deduction of the items specified, but also, as above stated, in regard to the inclusion of the value of the tangible personal property located outside of Pennsylvania. If the estate has been deprived of the "equal protection of the laws," since all the facts are agreed to, it should be easy to point out exactly how this is so. What has Pennsylvania [fol. 243] done which operates to "deny to any person within its jurisdiction the equal protection of the laws?" These executors and residuary legatees are accorded exactly the same protection given by this statute to every other person within its jurisdiction. Since then "the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied \* \* \* (because) the law operates 'equally and uniformly upon all persons in similar circumstances'": *Billings vs. Illinois*, 188 U. S., 97, 103. It would be of no moment, even if it is the fact, that double taxation may result, so far as regards the tangible personalty located in New York and Massachusetts (*Blackstone vs. Miller*, 188 U. S., 189; *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S., 54), for, if this is the case, every one else in like situation will be doubly taxed.

Two of the contentions made by these appellants are entitled to some further consideration. It is clear that neither testator nor any other decedent can, by his will, alter the amount which the Commonwealth is entitled to receive, save to the extent the statute

itself specifies, that is, where the gifts are to a "father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof \* \* \* or from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow (or) passing from an illegitimate child to his mother" (these being commonly called direct inheritances), but two per centum is to be charged upon the value thereof, and where the gifts are to collaterals,—which include all distributees except [fol. 244] those above specified,—five per centum is to be charged upon the value thereof. It necessarily follows that the direction of the present will "that all inheritance \* \* \* taxes \* \* \* shall be paid out of the capital of my residuary estate," can have no effect in reducing the amount of tax to be paid to this State, but only operates, as between the two classes of gifts, to fix the ultimate payment upon the residuary devisees and legatees, in relief of the others, each of whom, but for that clause, would suffer an abatement of his or her devise or bequest, to the extent of the tax imposed upon its value. If this was not so, and a testator was permitted to reduce the amount payable to the State, by simply charging upon the residuary estate all the taxes paid elsewhere, the sovereign power of the State to impose them as it pleases, subject only to the requirement of equality and uniformity, would have to be made subject also, in this class of cases, to the unrestrained directions of a testator. Under such circumstances, a decedent who had a relatively large amount of property elsewhere, might, by the device stated, greatly embarrass and perhaps largely or wholly defeat the claim of the domiciliary State, even upon the value of the personalty within her own borders.

The inequity of this contention is particularly apparent as to the tax of other States on the realty located therein, the value of which is not considered in determining the amount of our inheritance tax. We fully agree with the contention of these appellants that it would be "quite preposterous to say that the State of Pennsylvania has any jurisdiction to impose a tax upon the tax which is paid to the foreign state upon the transfer of foreign real estate." In the ab-[fol. 245] sence of a statutory provision so authorizing, however, it would be at least equally preposterous to say that a legatee can have deducted from the actual value of the property in our State, which he inherits, the amount he or some one else pays some other State, upon the realty there situated, and pay our tax only on the difference and this, and not the imaginary levying of "a tax upon the tax which is paid to the foreign State," is the actual situation.

As to the inheritance tax paid to this State, we may further say that the Act discloses no trace of a purpose to permit the deduction of the tax itself, in order to determine the valuation upon which the tax is to be levied. On the contrary, section 16 expressly provides that before paying any legacy the "executor or administrator, or other trustee \* \* \* shall deduct (the tax) therefrom at the

rate of two per centum upon the whole legacy (if the inheritance is direct) \* \* \* and at the rate of five per centum upon the whole legacy," if the inheritance is collateral. Hence it is papably erroneous to say that the percentage to be levied on the "clear value of such estate," as calculated in the manner provided by the statute, should not be levied thereon, but on a sum which is that "clear value" less the tax itself; that is, in the case of direct inheritance on 98 per cent. of that value, and in the case of collaterals on 95 per cent. of it. Doubtless the legislature could thus provide, but it has not, and, so far as we are aware, no other legislature ever has pursued that course.

The next contention is that the tangible personal property given to the widow, and also that which was to become part of "The Frick Collection," is not subject to this tax because situated in other [fol. 246] States than Pennsylvania. Every one concedes those assets cannot be taxed by this Commonwealth; they are incorporated into the great body of property of other States, and by reason thereof, are necessarily subject only to their tax laws and other statutes: *St. Louis vs. Wiggins Ferry Co.*, 11 Wall, 423; *Leisy vs. Hardin*, 135 U. S., 100; *Pittsburgh &c. Coal Co. vs. Bates*, 156 U. S., 577. It is sometimes stated in general terms that the reason for this is that the right to tax is based on the protection accorded (*Union Refrigerator Transit Co. vs. Kentucky* 199 U. S., 194, 202; *Tappan vs. Merchants' National Bank*, 86 U. S. 490, 501; *Shaffer vs. Howard*, 250 Fed., 873, cited by these appellants) and hence, as the State of the situs is the only one which can give protection to the tangible property there located, it is argued that no other State can tax it, either directly or indirectly. This contention, founded as it is on general expressions only, is, as usually happens in such cases, plainly fallacious. Even the cases cited do not sustain the conclusion sought to be deduced from them. In *Union Refrigerator Transit Co. vs. Kentucky*, supra, which is much relied on by these appellants, the court is careful to say that it is only where "the taxing power is in no position to render these services or otherwise to benefit the person or property taxed" that the tax is objectionable. The other authorities are to the same effect. Surely the State-given right of transmission, by which these appellants seek a present award of \$24,704,126.55, may be said "otherwise to benefit" them.

Moreover, it is said in *Southern Pacific Co. vs. Kentucky*, 222 U. S., 63, 76, that "The legality of a tax is not to be measured by the benefit received by the taxpayer, although equality of burdens be [fol. 247] the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden obtainable, however, desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law." So far as we are aware no well considered opinion, certainly none of the cases cited by these appellants, in any way controverts those principles.

Besides, a multitude of authorities state, and these appellants concede, that this is not a tax on the tangible personalty in New York

and Massachusetts, but only on the right of transmission given by the laws of this State, where testator and these distributees alike were and are domiciled. This class of taxes, *Union Refrigerator Transit Co. vs. Kentucky*, supra (page 211) says "are controlled by different considerations." It follows that as the right of transmission is State-created, and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of decedent's property wherever located. When this right of transmission, coupled with the terms and conditions mentioned, fastens upon property, or becomes the medium by which its ownership or devolution is asserted, those who claim under the statute must do so cum onere, that is, must pay a tax, measured in the way stated; and this it has been [fol. 248] clearly held the Commonwealth has a right to require.

This conclusion is foreshadowed, but not expressly decided, in *Keeney vs. New York*, 22 U. S., 525, 539, where the property was in New Jersey at the time the inheritance tax was collectible and the property received by the distributees. In *Maxwell vs. Bugbee*, 250 U. S. 525, however, the question was squarely raised, and it is said at page 539: "It is next contended that the effect of including the property beyond the jurisdiction of the state in measuring the tax amounts to a deprivation of property without due process of law because it in effect taxes property beyond the jurisdiction of the state. It is not to be disputed that, consistently with the Federal Constitution, a state may not tax property beyond its territorial jurisdiction, but the subject matter here regulated is a privilege to succeed to property which is within the jurisdiction of the state. When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed. This principle has been frequently declared by decisions of this court."

There are, moreover, other insurmountable obstacles in the path of these appellants. If it was necessary to obtain the express or implied consent of New York and Massachusetts, before this Commonwealth would be allowed to include, in the total valuation of the estate, the value of this foreign-located tangible personalty (which, of course, it is not), it would not be difficult to show that both were given the former by the statutes of those States, hereinafter quoted, and the latter in the undisturbed comity existing between the States. [fol. 249] It is said in *Bullen vs. Wisconsin*, 240 U. S., 625: "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicile as determining the succession, it may be said that, in a practical sense at least, the law of the domicile is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicile, whatever the limitations of power over the specific chattels may be." To some degree, of course, the rule of comity may be modified by the laws of the State where such personalty is located (see cases cited in *New Orleans vs. Stempel*, 175 U. S., 309, 313); but there is nothing appearing



in the legislation of either New York or Massachusetts denying or qualifying the right claimed by this Commonwealth. True, there are provisions in their laws which differ from ours; notably those exempting charities from even this species of taxation, and limiting the proportion of the estate which a testator may give to charity. These relate, however, only to wills of testators there domiciled; the applicable statutory provisions regarding estates of non-resident decedents (showing also, if this is needed, the express consent of those States to the proceedings here), being as follows:

New York: "The validity and effect of a testamentary disposition of real property, situated within the State, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated [fol. 250] within the state, and the ownership and disposition of such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death."

Massachusetts: Chapter 199, Section 1. "If administration is taken in this Commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of the state or country of which he was an inhabitant."

Chapter 65, section 5. "Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

We agree, therefore, with counsel for the Commonwealth, that under the circumstances stated "it is mere metaphysics to argue whether the transfer (of the tangible personality under consideration) is effected by virtue of the law of the situs or the law of the domicile; the fact is that tangible personal property passes according to, and in the manner provided by the law of the domicile." We [fol. 251] are clear, also, that there is no legal objection to including the value of the tangible personal property located in New York and Massachusetts; and this conclusion would probably be inevitable also (even if there was no comity existing between those States and ours, and no statutes of theirs on the subject), because of the admitted facts that all of the assets presently being distributed, and now



claimed by these appellants, are located in Pennsylvania, and the will of testator, through which their right is derived, requires the tax to be paid out of them. For the reasons stated, no claim to these assets can successfully be made, save upon compliance with our statute requiring the payment of an inheritance tax on the value of all the tangible property there located, as well as on the value of the real and personal property in this State.

The principles stated answer also the contention that the tax cannot be assessed at this time, nor any interest charged, because some disputed and contingent claims have not been paid, and hence, it is not yet known what amount should be deducted for them and for administration expenses in adjusting them. If, however, the Act of 1919, provides that this character of tax shall fall due at a given time after a decedent's death, it must then be paid; and if it fixes a date from which interest shall run, it will begin to run from that date. It is erroneous to assert that interest upon a liability never begins to run until the principal is payable; this is so only when no provision is made on the subject; *Morris vs. Ellwood*, 275 Pa., 319. Many notes, to be paid in the future, carry "interest from date;" and this may always be provided for by contracting parties, and by statute in cases within the State's power to levy and collect. [fol. 252] It is only necessary, therefore, to see what the Act of 1919 says as to the time the tax shall become due and payable, and from what date interest shall run, remembering always that the tax is on the estate in its entirety, and not on each devise and bequest, when and as payable, as these appellants erroneously contend.

It must be admitted the Act might have made clearer the answer as to the time when the tax is due, but enough appears to show the legislative intention. Section 14, which relates to the property of resident decedents, provides that "Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same." Section 29 says that "Whenever any tax imposed by this Act upon the transfer of property of a non-resident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same" or may sue to recover it in "any court of this Commonwealth or elsewhere." And section 38, which relates to both resident and non-resident decedents, provides that "If the tax is paid within three months after the death of the decedent, a discount of five per cent will be allowed. If the tax is not paid at the end of one year from the death, interest shall be charged at the rate of twelve per centum per annum on such tax." \* \* \*

The last sentence above, fixes the fact that interest begins to run at the end of the year; and all the provisions quoted, when considered together, may fairly be construed to mean that the tax is [fol. 253] due and payable not later than the end of the year, which time had expired before the award appealed from was made. The court below did not err, therefore, in directing the payment of the

tax on the instant distribution, the assets in which, as well as those not included in the present account, but nevertheless included in the tax valuation, belonging alike to these appellants, who are, by this distribution, awarded a large part of the estate. It may be well to add that sections 20 and 40 of the Act provide an adequate remedy for recovering back any excess payment made to appear by reason of later developments in the estate.

By the Act of July 9, 1919, P. L. 794, it is provided as follows: "All estates in any building, ground, books, curios, pictures, statuary, or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." No other statute grants exemption from inheritance taxes. By virtue of the provision quoted, the Commonwealth concedes that the value of the land given to the city of Pittsburgh for a public park should be deducted from the "clear value of the estate," in determining the amount upon which the tax should be assessed, but claims that the \$2,000,000 bequeathed for the purpose of keeping the park in order, should not be deducted. The court below erroneously decided otherwise, stating as its reasons that the legacy was given "for the purpose of completing the gift of the land, to effectuate the purpose of the testator," and was no "more than will [fol. 254] be reasonably required to maintain and embellish said land for park purposes."

It will be noticed, however, that the statute nowhere refers to money gifts, but expressly states what subject shall be exempted from the payment of the tax. It does not say "all estates \* \* \* given for the sole use of the public," but that "all estates in any building, ground, books, curios, pictures, statuary or other works of art," given for such use, shall be exempted, and by no process of reasoning can a money gift be held to come within any of these classes. It follows, therefore, that the \$2,000,000 should not have been deducted in fixing the amount upon which the tax is levied; not only because provisions exempting property from taxation must be strictly construed (*Bank of Commerce vs. Tennessee*, 104 U. S., 493; *Comm. vs. Northern Electric L. & P. Co.*, 145 Pa., 105, 109), but also because the expression of the particular things which shall be exempted, excludes all other subjects: *expressio unius est exclusio alterius*.

Among other personalty owned by testator, located in his dwelling house in New York City, were a Louis XV. Tulip Rosewood Library Table, which was appraised at \$5,500, and a 16th Century French Walnut Cabinet, appraised at \$35,000. The Commonwealth claims that they are "antique \* \* \* furniture," within the meaning of those words in the foregoing quotation from testator's will, and hence were included in the gift to the trustees for the benefit of The Frick Collection, and upon their appraised value a tax of five per cent. should be assessed, although that corporation refused to receive them because they were given by the will to the widow, [fol. 255] who, under the decree below, pays a tax at the rate of

two per cent. only. The court below overruled this claim because of an agreement of all the parties interested, including the Commonwealth, that these and the other articles of furniture in testator's New York home were "nothing more than the ordinary furniture and furnishings suitable for such residence." Since that which is "nothing more than ordinary furniture" and "antique \* \* \* furniture" are not or may not be the same, and there is no evidence compelling the conclusion that they are not, we cannot convict the court of error in holding they are not "antique \* \* \* furniture" within the meaning of the will. Moreover, the refusal of "The Frick Collection" to receive them as "antique \* \* \* furniture" necessarily resulted, if they were such, in their falling into the residue, upon which the tax imposed on their value would have been at the rate of two per cent., exactly as it was charged in the decree appealed from.

There is one other matter, not referred to in the assignments of error, but to which our attention is specifically called by a stipulation between the Commonwealth and the parties interested under the will. It appears that testator had purchased what are known as the Fragonard Panels, which were appraised at the value of \$750,000, and the Boucher Panels, which were appraised at the sum of \$150,000; and had "reconstructed the rooms, in which his art collection was to be exhibited, so as to contain said panels, and they were placed therein and are now there, being applied to the walls of the rooms." Whether or not the result of this was to make them a part of the realty, under the laws of New York, we do not know, except as we may infer the negative, since apparently their value was included in fixing the amount upon which the tax was assessed, and no assignment of error objects to this. Attention is called to it but because of the state of the record we can take no action on the subject.

The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate.

Frazer, J. files a dissenting opinion.

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[fol. 257] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

#### DISSENTING OPINION

FRAZER, J.:

A question is raised in this proceeding as to the right of the state to tax that part of decedent's property paid to the United States government in the form of an estate tax. There can be no doubt as to the meaning of the Act of 1919. The legislature plainly intended,

by Section 2, to prevent the deduction of such tax before assessing the state transfer tax. The statute was passed to overcome the decisions of this court in *Otto's Estate*, 257 Pa., 155 and *Knight's Estate*, 261 Pa., 537, wherein we held that, in computing the net value of the estate, taxes due the federal governments and foreign states should be deducted. The Act of 1919, on the point here involved, was construed by this Court in *Kirkpatrick's Estate*, 275 Pa., 271. The writer dissented from the conclusion reached in that case by the majority of the Court, but filed no opinion setting out his [fol. 258] reasons for such dissent. In view of the presentation of the same question in this proceeding, and of the further fact that this case will probably be taken before the Supreme Court of the United States, it seems proper that reasons for such dissent be briefly stated.

The power of the United States to tax is limited only by the extent of the necessity for raising money to meet the various needs of government. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." *McCullough vs. Maryland*, 17 U. S., 315, 429. The opinion in which this language was used firmly established the principle that a state is without power to tax an instrumentality of the Federal Government—a principle which has been constantly followed and applied in the century elapsed since the decision there rendered. The general rule is, therefore, that states are without authority, by taxation or otherwise, to in any manner control or interfere with the operations of the Federal Government, or the instrumentalities by which that government is carried on. The latter is supreme within its sphere of action, and, where there is inconsistency or conflict, the state laws and regulations must yield for the benefit of the whole. If the State of Pennsylvania is permitted to tax property appropriated by the Federal Government under its taxing power this, in effect, permits the state to collect revenue from property set aside for the use of the United [fol. 259] States. If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States. The federal tax is an estate tax payable out of the estate of decedent and is imposed, regardless of the will of the decedent, on the gross estate, after deducting designated items: *Knight's Estate*, *supra*. The right of the United States to first collect its tax seems to be conceded and if the right of the United States to tax includes the right to tax to any amount, or to take the whole where necessary, the result of holding that the federal tax should not be deducted before computing the state tax might be to impose a combined state and federal tax exceeding the value of the property. Let us suppose, for example, that the federal tax is sixty per cent. of the

estate and the state tax an equal amount. The result would be that the estate would owe in taxes twenty per cent. more than its value, regardless of what that might be. While it may be argued that this situation would not be likely to arise, and indeed presents a very remote possibility, yet it shows the logical result of permitting two or more sovereign powers to levy a tax on the whole of a decedent's estate. The fact that the right of succession is a state right and not within the control of the federal government does not give to the state power to take away from the federal government the subject matter of the tax, as was suggested in the opinion of the majority of [fol. 260] this court in *Kirkpatrick's Estate*, *supra*, inasmuch as, under the federal law, the tax is on the estate as a whole and not on the transfer to the beneficiary and the justification for the tax is the ending of the estate by death rather than the beginning of a new estate by succession: *Knowlton vs. Moore*, 178 U. S., 41.

The majority opinion holds exempt the land given to the City of Pittsburgh as a public park but imposes a tax of 5 per cent. on the fund of \$2,000,00- given for the purpose of taking care of the property. It is conceded the sum so given is not in excess of the amount necessary to properly improve and maintain the park and that, in absence of such gift, the city would be obliged to tax its citizens to provide for such maintenance. It is true the Act of 1919 refers in its exceptions only to "estates in any buildings, ground, books, curios, pictures, statuary or other works of art" given for public purposes and does not specifically mention funds left for maintenance of such objects. Any distinction between the gift of land for a park and the gift of a sum of money for its maintenance or for the purchase of property to be used as a park, is but an arbitrary one and not based on a real difference in the purposes or object of the gift. Granting the power of the legislature to make an arbitrary distinction if it sees fit to do so, the question is whether this has been done in the Act of 1919.

If the statute in question is to be construed strictly, then the majority opinion of the court is undoubtedly right. The argument for such strict construction, however, is based on prior decisions rendered in cases involving, not the question of exemption of public property, but exemption of private property held for charitable or other purposes [fol. 261] poses, bringing it within the laws providing for exemption from taxation. There is a clear distinction in the law applicable to these two classes of cases. Public property is never subject to tax laws and no portion of it can be without express statutory enactment. Accordingly, no exemption is needed for public property held as such: *Poor Directors vs. School Directors*, 42 Pa., 21; *Pittsburgh vs. Sterrett Sub-District School*, 204 Pa., 635, 641. Exemption is the rule and taxation the exception. In considering legislation of the character here in question, it is always to be presumed that general language is used with reference to taxable subjects, and the property of municipalities does not fall within the ordinary designation of taxable subjects: *County of Erie vs. City of Erie*, 113 Pa., 360. To levy a tax on such property would merely mean the assessment of new taxes to meet the liability which the city had

imposed upon itself and no benefit would accrue. On the contrary, an additional liability would result, measured by the expenses of imposing and collecting the tax. For this reason, it is not reasonable to conclude that a law, however general, was intended to reach property held by the public for public purposes. While such property may be taxed if the legislature sees fit to provide, the intention must be clearly expressed or necessarily implied. On the other hand, as to private property, even though held for private charities and therefore exempt as such, a different rule applies. In such case liability to taxation is the rule and the person claiming exemption must point to an express statute granting relief from the burden. An illustration of this is found in *Robb vs. Philadelphia*, 25 Pa. Superior Ct., 343, which followed the general principles established many years [fol. 262] ago by this court. In the course of the opinion in the case just cited, it was said (Page 346): "There is this distinction for the purpose of taxation between property owned by a church and that owned by a municipality and devoted exclusively to public purposes. The church must show ground on which its property is exempt. The public property of a municipality cannot be taxed unless there is the clearly manifest legislative intention that it shall be subject to the imposition. Property belonging to the state and its municipalities, and which is held for governmental purposes, is presumed to be exempt, and is not included in any designation of property to be taxed however sweeping, unless the statute authorizing the tax expressly provides." Citing *Pittsburgh vs. Sterrett Sub-District School*, *supra*, wherein appear an elaborate review of the authorities of our own and sister states.

It is also to be noted, as having an important bearing on this question, that the settled policy of the State is to exempt from taxation "institutions of purely public charities," and that they "may be exempt by necessary implication of law;" *Mattern vs. Canevin*, 213 Pa., 588, 589, '90, construing Art. IX, Sec. 1, Constitution of Pennsylvania.

Applying the foregoing principles to the present case, it seems a narrow construction of the act in question to exempt existing physical things devised for public purposes, such as buildings, ground, books, curios, works of art, etc., and to refuse to exempt a monetary gift made either for the purpose of purchasing such objects or maintaining those already in existence. The purpose and spirit of the law applies to the money equally with the objects [fol. 263] enumerated. Bearing in mind the principles above stated, showing the policy of our law, it seems to the writer of this opinion that the Act of 1919 should be construed to include money left by will to maintain the charitable objects there exempt.

Entertaining these views on the questions briefly stated above, the writer enters his dissent from the opinion of the majority.



## [fol. 264] IN THE SUPREME COURT OF PENNSYLVANIA

ASSIGNMENTS OF ERROR IN THE SUPREME COURT OF PENNSYLVANIA  
IN THESE CASES WHICH RAISE THE FEDERAL QUESTIONS

NOTE.—The assignments of error in this court which relate to the failure of the court below to sustain exceptions filed in that court by the petitioners are printed in appellant's brief heretofore filed, beginning at page 32. The longer assignments have the exceptions incorporated in them, in accordance with Rule 36 of this court, by means of references to the places in the record where the exceptions are printed. But the assignments of error, as they are printed in this exhibit, contain the exceptions restored to their proper places and set out in full. The assignments of error which are printed here are the assignments filed at Nos. 44 and 45 October Term, 1923. Assignments raising the same Federal questions were filed at Nos. 42 and 43 October Term, 1923.

First. The court erred in not sustaining the first exception to the decree in this case, said exception being as follows, to wit:

"First. To the decree entered in this case, said decree being as follows:

And now, to wit, July 7th, 1922, this matter came on for further hearing, and testimony taken, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the fund suspended as per decree of April 20, 1922, viz: \$44,482,567.47, be paid in accordance with the following schedule of distribution unless exceptions are filed thereto within ten days or an appeal is taken herefrom within three weeks.

Per Curiam.

Balance Corpus & Income.....	\$44,482,567.47
To Comth. of Penna. Trans. Inh. Tax & int. ....	1,188,248.16
and balance for distribution suspended until further order of Court, viz.....	43,294,319.31
	<hr/> \$44,482,567.47

The grounds upon which said exception is founded are as follows:

(a) That this order of distribution was premature. There was no tax due the Commonwealth at the time this decree was entered nor has any since become due.

(b) Said sum of \$1,188,248.16 includes interest at the rate of 6% per annum from one year after decedent's death, to wit, December 2, 1920, to July 2, 1922, to wit, the sum of \$103,090.02, whereas no interest has accrued or is due upon the said tax.

(c) Said amount of \$1,188,248.16 includes a tax at the rate of 2% upon the appraised value of tangible articles of personal prop-



erty located in the States of New York and Massachusetts of the appraised value of \$403,353, which were bequeathed to Mrs. Frick.

(d) Said amount of \$1,188,248.16 includes a tax at the rate of 5% upon tangible articles of personal property located in the State [fol. 266] of New York of the appraised value of \$13,132,391, which were bequeathed to "The Frick Collection."

(e) Said amount of \$1,188,248.16 includes a tax upon the estimated taxable value of the residuary estate. Said estimated taxable value is incorrect. No final account has been filed and there has never been any distribution made to the residuary legatees and it is impossible to tell what the amount of the residuary estate will be or what tax should be levied thereon. In arriving at the estimated net residuary estate proper deductions were not made from the estimated gross value of the estate, to wit:

1. Administration expenses. A deduction was only made of the administration expenses which accrued to December 31, 1921. There will be additional administration expenses, the amount of which is not now ascertainable.
2. No proper deduction was made for the debts of the decedent. The only deduction made for debts was the debts of the decedent which has been paid by the executors to December 31, 1921, as shown in their first and partial account. The testimony in the case discloses that there are debts in a large and, at present, unascertainable amount which have not been either liquidated or paid.
3. In estimating net residuary estate no deduction was made for the Pennsylvania inheritance taxes paid on the general and specific devises and bequests, which taxes so paid amounted to \$1,925,247.61.
4. In estimating said net residuary estate there was no deduction [fol. 267] of inheritance taxes paid to other states and countries which consisted of taxes on the transfer of real estate situated in states other than Pennsylvania.
5. In estimating said net residuary estate there was no deduction of inheritance taxes paid to states and countries other than Pennsylvania on the transfer of stock corporations of states and countries other than Pennsylvania and which could only be reduced to possession by the executors upon payment of said taxes.
6. In arriving at the estimated net amount of said residuary estate there was no deduction made of the amount heretofore paid the United States as an estate tax, to wit, the sum of \$6,338,898.68.
7. In arriving at the net amount of the said estate there was no deduction or allowance made for further payments that may have to be made of Federal taxes and taxes to other states and countries.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in

the above entitled cases and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

[fol. 268] Second. The Court erred in not sustaining the second exception to the decree in this case, said exception being as follows, to wit:

"Second. To the distribution of \$1,188,248.16 to the Commonwealth of Pennsylvania.

The grounds upon which said exception is founded are as follows:

(a) That this order of distribution was premature. There was no tax due the Commonwealth at the time this decree was entered nor has any since become due.

(b) Said sum of \$1,188,248.16 includes interest at the rate of 6% per annum from one year after decedent's death, to wit, December 2, 1920, to July 2, 1922, to wit, the sum of \$103,090.02, whereas no interest has accrued or is due upon the said tax.

(c) Said amount of \$1,188,248.16 includes a tax at the rate of 2% upon the appraised value of tangible articles of personal property located in the States of New York and Massachusetts of the appraised value of \$403,353, which were bequeathed to Mrs. Frick.

(d) Said amount of \$1,188,248.16 includes a tax at the rate of 5% upon tangible articles of personal property located in the State of New York of the appraised value of \$13,132,391, which were bequeathed to "The Frick Collection."

(e) Said amount of \$1,188,248.16 includes a tax upon the estimated taxable value of the residuary estate. Said estimated taxable value is incorrect. No final account has been filed and there has never been any distribution made to the residuary [fol. 269] legatees and it is impossible to tell what the amount of the residuary estate will be or what tax should be levied thereon. In arriving at the estimated net residuary estate proper deductions were not made from the estimated gross value of the estate, to wit:

1. Administration expenses. A deduction was only made of the administration expenses which accrued to December 31, 1921. There will be additional administration expenses, the amount of which is not now ascertainable.

2. No proper deduction was made for the debts of the decedent. the only deduction made for debts was the debts of the decedent which had been paid by the executors to December 31, 1921, as shown in their first and partial account. The testimony in the case

discloses that there are debts in a large and, at present, unascertainable amount which have not been either liquidated or paid.

3. In estimating said net residuary estate no deduction was made for the Pennsylvania inheritance taxes paid on the general and specific devises and bequests, which taxes so paid amounted to \$1,925,247.61.

4. In estimating said net residuary estate there was no deduction of inheritance taxes paid to other states and countries which consisted of taxes on the transfer of real estate situated in states other than Pennsylvania.

5. In estimating said net residuary estate there was no deduction of inheritance taxes paid to states and countries other than Pennsylvania on the transfer of stock or corporations of states and countries other than Pennsylvania and which could only be reduced to possession by the executors upon payment of said taxes.

6. In arriving at the estimated net amount of said residuary estate there was no deduction made of the amount heretofore paid the United States as an estate tax, to wit, the sum of \$6,338,898.68.

7. In arriving at the net amount of the said estate there was no deduction or allowance made for further payments that may have to be made of Federal taxes and taxes to other states and countries.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Fifth. The court erred in not sustaining the fifth exception to the decree in this case, said exception being as follows, to wit:

"Fifth. To so much of the amount distributed to the Commonwealth of \$1,188,248.16 as includes a tax at the rate of 2% upon the appraised value of tangible articles of personal property located at the time of Mr. Frick's death in the States of New York and Massachusetts of the appraised value of \$403,353 which were bequeathed to Mrs. Frick, to wit, a tax in the sum of \$8,067.06.

The grounds upon which said exception is founded are as follows: Said tangible personal property of the value of \$403,353 so bequeathed to Mrs. Frick is not liable for any transfer inheritance tax imposed under the laws of the Commonwealth of Pennsylvania. The imposition of this tax based upon an appraisement erroneously including the tangible personal property situated within the States of New York and Massachusetts will deprive the estate and residuary

legatees of their property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Sixth. The court erred in not sustaining the sixth exceptions to the decree in this case, said exception being as follows, to wit:

"Sixth. So much of said amount of \$1,188,248.16 as includes a tax at the rate of 5% upon \$13,132,391, the appraised value of tangible articles of personal property located in the State of New [fol. 272] York bequeathed under Mr. Frick's will to "The Frick Collection," to wit, a tax in the amount of \$656,619.55.

The grounds upon which said exception is founded are as follows: Said amount of \$656,619.55 is a tax upon the appraised value of tangible articles of personal property, bequeathed under Mr. Frick's will to "The Frick Collection," a New York corporation, all of which articles were located at the time of Mr. Frick's death in the State of New York. The State of Pennsylvania had no power to impose a transfer inheritance tax on said property and the imposition of a Pennsylvania inheritance tax based upon an appraisement erroneously including said property deprives the estate and the residuary legatees of their property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Seventh. The court erred in not sustaining the nineteenth exception to the decree in this case, said exception being as follows, to wit:

"Nineteenth. The said decree is erroneous in including in the [fol. 273] distribution to the Commonwealth of Pennsylvania a tax upon tangible articles of personal property situated at the time of

the death of the said Henry C. Frick in the States of New York and Massachusetts.

The ground upon which this exception is founded is that so much of Article I, Section 1, of the Act of the General Assembly entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, A. D. 1919 (Pamphlet Laws page 521), as provides that a tax shall be imposed upon the transfer of any property or of any interest therein or income therefrom to persons or corporations by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere, as construed by the Auditing Judge, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Twelfth. The court erred in not sustaining the twenty-second exception to the decree in this case, said exception being as follows, to wit:

"Twenty-second. The said decree is erroneous in including in the distribution to the Commonwealth of Pennsylvania a tax and determining the liability of the estate therefor by ascertaining the clear value of the property subject to a tax without allowing a deduction from the estimated value of the gross estate for the Pennsylvania inheritance tax paid on the general and specific legacies and devises.

The ground upon which this exception is founded is that Article I, Section 2, of the Act of the General Assembly entitled 'An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within

[fol. 275] this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal,' approved the 20th day of June 1919 (Pamphlet Laws page 551), providing that 'All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes [fol. 276] paid on such estate to the Government of the United States or to any other State or Territory,' as construed by the Auditing Judge, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Thirteenth. The court erred in not sustaining the twelfth exception to the decree in this case, said exception being as follows, to wit:

"Twelfth. Said amount of \$1,188,248.16 includes a tax on an estimated taxable value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of real estate in other states.

The ground upon which this exception is founded is that in ascertaining the net estate no deduction was made for inheritance

taxes paid to other states, which inheritance taxes so paid consisted of taxes on the transfer of real estate situate in other jurisdictions [fol. 277] than Pennsylvania, and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Fourteenth. The court erred in not sustaining the thirteenth exception to the decree in this case, said exception being as follows, to wit:

"Thirteenth. Said amount of \$1,188,248.16 includes a tax on the estimated taxable value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of shares of stock of corporations of other states.

The ground upon which this exception is founded is that in ascertaining the net estate no deduction was made for inheritance transfer taxes paid to other states, which inheritance taxes so paid [fol. 278] consisted of taxes on the transfer of shares of capital stock of corporations incorporated in other states than Pennsylvania and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law, and also deprive them of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Fifteenth. The court erred in not sustaining the twenty-first exception to the decree in this case, said exception being as follows, to wit:



"Twenty-first. The said decree is erroneous in including in the distribution to the Commonwealth of Pennsylvania a tax and determining the liability of the estate therefor by ascertaining the clear value of the property subject to a tax without allowing a deduction for or on account of taxes paid or to be paid on said estate to other states.

The ground upon which this exception is founded is that so much of Article I, Section 2, of the Act of the General Assembly [fol. 279] entitled 'An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid, and providing penalties; and citing certain acts for repeal;' approved the twentieth day of June, 1919 (Pamphlet Laws, page 521), as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to any other State or Territory, as construed by the Auditing Judge, is invalid on the ground of its being repugnant to section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made [fol. 280] in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Sixteenth. The court erred in not sustaining the fourteenth exception to the decree in this case, said exception being as follows, to wit:

"Fourteenth. Said amount of \$1,188,248.16 includes a tax on the estimated taxable value of the residuary estate without deducting from the estimated gross estate the amount paid the United States as an estate tax.

The ground upon which this exception is founded is that in arriving at the estimated net amount of said residuary estate there was

no deduction made from the estimated gross estate of the amounts heretofore paid the United States as an estate tax, to wit, \$6,338,898.68, and the imposition of so much of said tax as consists of 5% on 87% thereof and 2% on 13% thereof will deprive the estate and the residuary legatees of their property without due process of law and also deprive them of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon [fol. 281] upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Seventeenth. The court erred in not sustaining the twentieth exception to the decree in this case, said exception being as follows, to wit:

"Twentieth. The said decree is erroneous in including in the distribution to the Commonwealth of Pennsylvania a tax and determining the liability of the estate therefor by ascertaining the clear value of the property subject to a tax without allowing a deduction for or on account of taxes paid or to be paid on said estate to the Government of the United States.

The ground upon which this exception is founded is that so much of Article 1, Section 2, of the Act of the General Assembly entitled 'An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal,' approved the twentieth [fol. 282] day of June, 1919, (Pamphlet Laws page 521) as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States, as construed by the Auditing Judge, is invalid on the ground of its being repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and ex-

cises, to pay the debts and provide for the common defence and general welfare of the United States, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, sections 400 to 410, inclusive, of an Act of the Congress of the United States entitled 'An Act to provide revenue, and for other purposes,' approved February 24, 1919, (United States Statutes at Large, volume 40, part 1 pages 1096 to 1101) and section 3467 of the United States Revised Statutes, are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding, and also to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property [fol. 283] without due process of law and also denies to them the equal protection of the laws.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

Eighteenth. The court erred in not sustaining the fifteenth exception to the decree in this case, said exception being as follows, to wit:

"Fifteenth. Said amount of \$1,188,248.16 includes a tax on the estimated taxable value of the residuary estate without deducting from the estimated gross estate the amount paid to the United States as an estate tax, the amounts paid to other States as inheritance taxes on the transfer of real estate and corporate stocks of corporations of said States, and the Pennsylvania inheritance taxes on the general and specific devises and bequests.

The ground upon which this exception is founded is that in arriving at the estimated net amount of said residuary estate there was no deduction made of the amounts heretofore paid the State of Pennsylvania on general and specific bequests and devises, the United States and other States as inheritance and estate taxes, and the imposition of so much of said tax as consists of 5% on 87% thereof [fol. 284] and 2% on 13% thereof will deprive the estate and the residuary legatees of their property without due process of law in violation of the Constitution of the State of Pennsylvania.

#### DECREE

And now, to wit, December 5, 1922, this matter came on to be heard by the Court in banc, upon exceptions to the decrees made in

the above entitled cases, and was argued by counsel and thereupon upon consideration thereof, it is ordered, adjudged and decreed the exceptions be, and the same are hereby dismissed, and the said decrees are affirmed.

Per Curiam."

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[fol. 285] IN SUPREME COURT OF PENNSYLVANIA

CERTIFICATE OF RECORD

COMMONWEALTH OF PENNSYLVANIA,

County of Allegheny, ss:

I, Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, do hereby certify that the foregoing Record, pages 1a to 33a, 36a to 49a, 51a to 71a, 109a, 120a to 127a, 132a to 161a, 163a to 166a, 182a to 228a and 9 to 6 and 1 to 3, inclusive, is a true and faithful copy of the Record and Proceedings of the Supreme Court of Pennsylvania, in the Western District aforesaid, in a certain suit therein pending, wherein Helen C. Frick is plaintiff in error and Commonwealth of Pennsylvania is defendant in error.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this thirteenth day of July in the year of our Lord one thousand nine hundred and twenty-three.

Pier Dannals, Prothonotary. (Seal of the Supreme Court of Pennsylvania, Western District.)

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[fol. 286] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

[fol. 287] [Table of contents omitted.]

[fol. 288] PETITION FOR WRIT OF ERROR—Filed June 23, 1923

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennsylvania:

The petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors of the last will and testament of Henry C. Frick, deceased, and Helen C. Frick, individually respectfully represents:

First. Your petitioners are the executors of the last will and testament of Henry C. Frick, deceased, and one of the residuary legatees under said will.

Second. In the proceeding in the Orphans' Court of Allegheny County, Pennsylvania, at No. 476 December Term, 1920, which was a statutory proceeding for the appraisal of the estate of Henry C. Frick, the Orphans' Court of Allegheny County decided and adjudicated the amount of estate or inheritance tax payable by the estate to the Commonwealth of Pennsylvania, and from said decision an appeal was duly prosecuted to this court by your petitioner, the residuary legatee, at No. 42 October Term, 1923, of this court, and by your petitioners, the executors, at No. 43 October Term, 1923, of this court.

Upon the audit of the account of the executors of the will of Henry C. Frick, deceased, in the Orphans' Court of Allegheny County, Pa., at No. 171 March Term, 1922, a decree of distribution was made by said court to the Commonwealth of Pennsylvania of \$1,188,248.16, and from said decree appeals were duly prosecuted to this court by [fol. 289] your petitioner, the residuary legatee, at No. 44 October Term, 1923, and by your petitioners, the executors, at No. 45 October Term, 1923. These appeals were argued in this court, and on the 30th day of April, 1923, final disposition was made of these cases by this court by overruling and dismissing all the assignments of error in all said cases and affirming the decrees of the Orphans' Court of Allegheny County, the court below. A copy of the opinion of this court by Mr. Justice Simpson is attached hereto and marked Exhibit "A," and a copy of the dissenting opinion of Mr. Justice Frazer is also attached hereto and marked Exhibit "B."

Third. This petition is accompanied by assignments of the errors alleged to have been committed by your Honorable Court, and prayer for reversal, which are attached hereto and marked Exhibit "D."

Fourth. This petition is accompanied by a motion for a reargument of these cases, which is attached hereto and marked Exhibit "E;" also by a brief in support of this petition and of said motion for a reargument, which is marked Exhibit "F."

Fifth. The statute of the State, the validity of which (as construed by this court and by the court below and under which authority was exercised in levying the tax complained of in these cases), is drawn in question on the ground of its being repugnant to the Constitution and laws of the United States, is the Act of the General Assembly of the Commonwealth of Pennsylvania entitled: "An Act providing for the imposition and collection of certain taxes upon the transfer [fol. 290] of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid, and providing penalties; and citing certain acts for repeal," approved the twentieth

day of June, 1919 (Pamphlet Laws, page 521); and the particular portions of said Act which, as construed by the court below and by this court, are claimed to be repugnant to the constitution and laws of the United States, are so much of Article I, Section 1 of said Act as provides that the State of Pennsylvania may levy the tax upon tangible articles of personal property situated at the time of the death of Henry C. Frick in the States of New York and Massachusetts, because said tax is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law; and so much of Article I, Section 2 of said Act as provides that in assessing said tax there shall be no deduction made or allowed on account of any taxes paid to the Government of the United States because said tax is repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts [fol. 291] and excises, to pay the debts and provide for the common defense and general welfare of the United States, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, Sections 400 to 410, inclusive, of an Act of Congress of the United States entitled: "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to 1101), and section 3467 of the United States Revised Statutes, are the supreme law of the land, and is also repugnant to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws. Also that so much of Article I, Section 2 of said Act as provides that in ascertaining the clear value of the estate subject to the tax no deduction shall be allowed on account of taxes paid on such estate to other States is invalid because it is repugnant to the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws. Also that so much of Article I, Section 1, and Article I, Section 2 of said Act as construed by this court and the Orphans' Court of Allegheny County as provides that in ascertaining the clear value of the property subject to the tax, no deduction shall be made from the amount payable by the residuary legatees for the Pennsylvania inheritance tax paid on the general and specific legacies and devises upon the ground that said Act as so construed [fol. 292] is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws. Also to so much of Article I, Section 1, and Article I, Section 2 of said Act which, as construed by this court, authorizes the imposition by the State of Pennsylvania of an inheritance tax without deducting from the taxable value of the estate the inheritance taxes

paid by the executors upon real estate situated in other States and upon the value of shares of stock in corporations of other States than Pennsylvania without deducting from said values the amount of taxes which had to be paid to the States in which said corporations were incorporated before said shares of stock could be reduced to possession by or come under the control of said executors, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

Sixth. All the foregoing questions were clearly raised in these cases prior to the final decision of this court. They were raised in the Orphans' Court at No. 171 March Term, 1922, by the first exception (Consolidated Record page 86a); by the 2nd exception (Consolidated Record, page 89a); by the 5th exception (Consolidated Record, page 91a); by the 6th exception (Consolidated Record, page 92a); by the 11th exception (Consolidated [fol. 293] Record, page 94a); by the 12th exception (Consolidated Record, page 95a); by the 13th exception (Consolidated Record, page 95a); by the 14th exception (Consolidated Record, page 96a); by the 15th exception (Consolidated Record, page 96a); by the 19th exception (Consolidated Record, page 99a); by the 20th exception (Consolidated Record, page 100a); by the 21st exception (Consolidated Record, page 102a); and by the 22nd exception (Consolidated Record, page 103a). All of the questions were also raised by corresponding exceptions filed in the Orphans' Court at No. 476 December Term, 1920 (See Consolidated Record, page 51a, et seq.) Said questions were all clearly raised in your Honorable Court by assignments of error filed therein to wit: by the 1st, 2nd, 5th, 6th, 7th, 12th, 13th, 14th, 15th, 16th, 17th and 18th assignments of error. Copies of said assignments of error are attached hereto and marked Exhibit "C."

Seventh. The decree entered in each of these cases is a final judgment or decree in a suit in the highest court of the State in which a decision in the suit could be had and is one where the validity of a statute of the State of Pennsylvania and of the authority exercised under a statute of the State of Pennsylvania was drawn in question on the ground that the said State statute and the authority exercised by the State officials under said statute was repugnant to the Constitution and laws of the United States, and the decision of this court and of the Orphans' Court of Allegheny County was in favor of the validity of the said State statute and of the authority exercised.

[fol. 294] Eighth. These are cases which may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error under the provisions of Section 327 of the Judicial Code.



Ninth. The Federal questions involved in each case were whether the Pennsylvania inheritance law of 1919, hereinbefore referred to, as construed by the court below and by this court to impose a transfer inheritance tax on tangible articles of personal property located at the time of Mr. Frick's death in Massachusetts and New York, does not violate the Constitution of the United States, and whether the requirements of the said Act of Assembly as construed by the court below and by this court as providing that in valuing the estate of Mr. Frick for purposes of taxation there should not be deducted from the gross value of the estate at the time of his death the amounts paid (a) to the United States as an estate tax (b) to other States as taxes on real estate, (c) to other States as taxes on the transfer of shares of stock of corporations of those States, and (d) to the Commonwealth of Pennsylvania as inheritance taxes on general and specific legacies and devises, do not violate the Constitution of the United States.

Wherefore, your petitioners, averring that the claims of Federal right herein mentioned were duly raised and insisted upon by them on the record in the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania, respectfully pray that a writ of error may issue and that they may be allowed to bring up for a review before the Supreme Court of the United States the said judgment of the Supreme Court of Pennsylvania, [fol. 295] and that your petitioners may have such other and further relief in the premises as may be just.

And your petitioners will ever pray, etc.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, and William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased; and Helen C. Frick, One of the Residuary Legatees under said Will, By ———. George Wharton Pepper, George B. Gordon, Attorneys for Petitioners.

STATE OF PENNSYLVANIA,  
County of Allegheny, ss:

Before me, the undersigned authority, a notary public in and for said state and county, personally appeared William Watson Smith, one of the petitioners, who being by me first duly sworn, according to law, deposes and says that the averments contained in the foregoing petition are true and correct to the best of his knowledge and belief.

—, —.

Sworn to and subscribed before me this — day of —,  
1923. — —, Notary Public.

[fols. 296-320] IN THE SUPREME COURT OF PENNSYLVANIA FOR THE  
WESTERN DISTRICT

[Title omitted]

EXHIBIT "A" TO PETITION

Opinion of the Court [omitted; printed side page 232]

Simpson, J.

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[fols. 321-327] IN THE SUPREME COURT OF PENNSYLVANIA, WEST-  
ERN DISTRICT

[Title omitted]

EXHIBIT "B" TO PETITION

Dissenting Opinion [omitted; printed side page 257]

Frazier, J.

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[fols. 328-348] EXHIBIT "C" TO PETITION

ASSIGNMENTS OF ERROR IN THE SUPREME COURT OF PENNSYLVANIA  
IN THESE CASES WHICH RAISE THE FEDERAL QUESTIONS—  
[Omitted; printed side p. 264]

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[fol. 349] EXHIBIT "D" TO PETITION

ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL

And now, — — —, 1923, come Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and Helen C. Frick, individually, as one of the residuary legatees, of the last will and testament of Henry C. Frick, deceased, plaintiffs in error, by their attorneys, and file herewith their petition for writ of error and say that there are errors in the record of the proceedings in the case of the appeal of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors of the last will and testament of Henry C. Frick, deceased, at No. 43 October Term, 1923, of the Supreme Court of Pennsylvania; in the case of the appeal of Helen C. Frick, one of the residuary legatees under the last will and testament of Henry C. Frick, deceased, at No. 42 October Term, 1923, of the Supreme Court of Pennsylvania; in the case of the appeal of

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors of the last will and testament of Henry C. Frick, deceased, at No. 45 October Term, 1923, of the Supreme Court of Pennsylvania, and in the case of the appeal of Helen C. Frick, one of the residuary legatees under the last will and testament of Henry C. Frick, deceased, at No. 44 October Term, 1923, of the Supreme Court of Pennsylvania; and for the purpose of having said cases reviewed in the Supreme Court of the United States make the following assignments of error:

[fol. 350] First. The Supreme Court of Pennsylvania erred in entering the following judgment in said cases:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."

The judgment of the Supreme Court of Pennsylvania deprives the plaintiffs in error, the said Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and the said Helen C. Frick, individually, as one of the residuary legatees, of their property without due process of law and deprives them of the equal protection of the laws, in violation of the Fourteenth Article of Amendment to the Constitution of the United States and also is repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, Sections 400 to 410, inclusive, of an Act of Congress of the United States entitled: "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to 1101), and Section 3467 of the United States Revised Statutes, are the supreme law of the land.

[fol. 351] Second. The Supreme Court of Pennsylvania erred in not reversing the decree of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the said decree deprives the plaintiffs in error, the said Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and the said Helen C. Frick, individually, as one of the residuary legatees, of their property without due process of law, and deprives them of the equal protection of the laws, in violation of the Fourteenth Article of Amendment to the Constitution of the United States and also is repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, and, also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the

laws of the United States made in pursuance thereof, to wit, among others, Sections 400 to 410, inclusive, of an Act of Congress of the United States entitled: "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to 1101), and Section 3467 of the United States Revised Statutes, are the supreme law of the land.

Third. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that said distribution of \$1,188,248.16 to the Commonwealth of Pennsylvania includes a tax, to the amount of \$664,686.61, upon tangible articles of personal property situated at the time of the death of the said Henry C. Frick in the States of New York and Massachusetts.

[fol. 352] The ground upon which this assignment of error is founded is that so much of Article I, Section 1, of the Act of the General Assembly of the State of Pennsylvania entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, A. D. 1919 (Pamphlet Laws page 521), as provides that a tax shall be imposed upon the transfer of any property or of any interest therein or income therefrom to persons or corporations by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere, as construed by the Orphans' Court of Allegheny County, Pennsylvania, and this court, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law.

[fol. 353] Fourth. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16 distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of real estate in other states.

The ground upon which this assignment of error is founded is that in ascertaining the net estate no deduction was made for inheritance taxes paid to other states, which inheritance taxes so paid

consisted of taxes on the transfer of real estate situate in other jurisdictions than Pennsylvania, and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Fifth. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16 distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of shares of stock of corporations of other states.

[fol. 354] The ground upon which this assignment of error is founded is that in ascertaining the net estate no deduction was made for inheritance transfer taxes paid to other states, which inheritance taxes so paid consisted of taxes on the transfer of shares of capital stock of corporations incorporated in other states than Pennsylvania and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law, and also deprive them of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Sixth. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the residuary estate without allowing a deduction for or on account of taxes paid or to be paid on said estate to other states.

The ground upon which this assignment of error is found is that so much of Article I, Section 2, of the Act of the General Assembly of the State of Pennsylvania entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer [fol. 355] thereof has been paid, and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, 1919, (Pamphlet Laws page 521) as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estate shall be the debts of the decedent and the expenses of the administration of such estates, and

no deduction whatever shall be allowed for or on account of any taxes paid on such estate to any other State or Territory, as construed by the Auditing Judge, is invalid on the ground of its being repugnant to section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

Seventh. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated tax value of the estate without deducting from the estimated value the amount paid the United States as an estate tax.

The ground upon which this assignment of error is founded is that so much of Article 1, Section 2, of the Act of the General Assembly of the State of Pennsylvania entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the [fol. 356] time of his death; and making it unlawful for any corporation of this Commonwealth, or national association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, 1919, (Pamphlet Laws page 521) as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States, as construed by the Auditing Judge, is invalid on the ground of its being repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, sections 400 to 410, inclusive, of an Act of the Congress of the United States entitled "An Act to provide revenue, and for other purposes," approved February 24, 1919, (United States Statutes at Large, volume 40, part 1, pages 1096 to 1101) and section 3467 of the United States Revised Statutes, are the supreme law of the land, and that the judges in every state are bound thereby, anything in the constitution or laws [fol. 357] of any state to the contrary notwithstanding, and also to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary



legatees of property without due process of law and also denies to them the equal protection of the laws.

Eighth. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the estate without allowing a deduction from the estimated value of the gross estate of the Pennsylvania inheritance taxes paid on the general and specific legacies and devises.

The ground upon which this assignment of error is founded is that Article I, Section 2, of the Act of the General Assembly of the State of Pennsylvania entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the 20th day of June, 1919 (Pamphlet Laws page 521), providing that "All taxes imposed by this act shall be at the [fol. 358] rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the Commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estate shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory," as construed by the Orphans' Court of Allegheny County, Pennsylvania, and this court, is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws.

Ninth. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsyl-



vania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania [fol. 359] includes, in reality, a tax not only upon the value of the estate under the jurisdiction of the State of Pennsylvania, but, in addition thereto, a tax on the taxes paid upon the estate to the United States and the various other States of the United States and the Dominion of Canada upon property, real and personal, situated in such other States and which was beyond the jurisdiction and taxing power of the State of Pennsylvania.

For which errors Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and Helen C. Frick, individually, as one of the residuary legatees of the last will and testament of Henry C. Frick, pray that said judgment of the Supreme Court of Pennsylvania be reversed and for costs.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased; Helen C. Frick, One of the Residuary Legatees under the Last Will and Testament of Henry C. Frick, Deceased, By George Wharton Pepper, George B. Gordon, Their Attorneys.

[fol. 360]

#### EXHIBIT "E" TO PETITION

#### MOTION FOR REARGUMENT

IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT,  
October Term, 1923

Nos. 42, 43, 44, 45

IN RE ESTATE OF HENRY C. FRICK, DECEASED; Appeals of ADELAIDE H. C. FRICK et al., Executors of the Last Will and Testament of HENRY C. FRICK, and HELEN C. FRICK, One of the Residuary Legatees under the Will.

Appeals from the Decrees of the Orphans' Court of Allegheny County, Pennsylvania, at Nos. 476, December Term, 1920, and 171, March Term, 1922

Petition of Adelaide H. C. Frick et al., Executors, and Helen C. Frick, Residuary Legatee, for the Allowance of a Reargument of These Cases

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennsylvania:

The petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors of the last will and testament of Henry C. Frick, deceased, and Helen C. Frick, individually, respectfully represents:

First. That on the 36th day of April, 1923, the appeals prosecuted by your petitioners from the decrees of the Orphans' Court of Allegheny County, Pennsylvania, were dismissed and the decrees of the Orphans' Court of Allegheny County, Pennsylvania, were affirmed, the opinion of the court being by Mr. Justice Simpson, a copy of which is attached hereto and marked "Exhibit A," from which decision Mr. Justice Frazer dissented and a copy of his dissenting opinion is attached hereto and marked "Exhibit B."

Second. This motion for reargument is accompanied by a petition for the allowance of a writ of error to the Supreme Court of the United States. Your petitioners respectfully suggest that, in view of the importance of the Federal questions involved in these cases and the fact that they have never been decided by the Supreme Court of the United States or heretofore decided by the Supreme Court of Pennsylvania, a reargument should be granted upon said Federal questions.

Third. Your petitioners respectfully suggest that, as the decision of this court in these cases is that the Pennsylvania inheritance tax act is an estate tax, to be adjudicated and determined upon the value of the gross estate, and not a succession tax, to be levied upon the amount of the distribution made to the various legatees, the decision is erroneous and will be found to be impracticable and at variance with the administrative provisions for the collection of the tax and at variance with the prior decisions of this court in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271.

Fourth. That so much of the decision of the majority of the court in these cases as holds that what is known as the "Park Fund" is taxable, in view of the reasons given in the dissenting opinion of [fol. 362] Mr. Justice Frazer, is erroneous and there should be a further argument of said question.

(Accompanying this petition are copies of all briefs used in the argument of these cases and a copy of the consolidated record in said cases.)

Wherefore, your petitioners pray that a reargument of these cases may be ordered.

And your petitioners will ever pray, etc.

Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney, and William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased; Helen C. Frick, One of the Residuary Legatees under said Will, By ———. George Wharton Pepper, George B. Gordon, Attorneys for Petitioners.

[fol. 363] STATE OF PENNSYLVANIA,  
County of Allegheny, ss:

Before me, the undersigned authority, a notary public in and for said State and county, personally appeared William Watson Smith, one of the petitioners, who, being by me duly sworn according to law, deposes and says that the averments contained in the foregoing petition are true and correct to the best of his knowledge and belief.

Sworn to and subscribed before me this — day of —, 1923.  
— —, Notary Public.

[fol. 364] EXHIBIT "F" TO PETITION

BRIEF IN SUPPORT OF PETITION FOR WRIT OF ERROR AND MOTION  
FOR REARGUMENT

First. It is respectfully submitted that a writ of error should be allowed in these cases,

(a) Because the decision of this court involves Federal questions which were clearly raised in this cause prior to the final decision of these cases.

(b) Because these cases fall within the class of cases reviewable by a writ of error:

Dahnke-Walker Milling Co. vs. Bondurant, 257 U. S., 282;  
Eureka Pipe Line Co. vs. Hallanan, 257 U. S., 265;  
United Fuel Gas Co. vs. Hallanan, 257 U. S., 277.

(c) The questions at issue have never been decided by the Supreme Court of the United States.

Second. It is respectfully submitted that a reargument should be allowed in these cases for the following reasons:

(a) The Federal questions are questions of extreme importance. The reasons upon which this court bases its opinion with reference to said Federal questions it is respectfully submitted are erroneous.

The reasoning of the court is based in part upon a misapprehension of the facts. For example, in the opinion of this court (this [fol. 365] book, page 11) this court states that the amount of tax had been fixed by proper proceedings before the Register of Wills, whereas in fact the proceedings before the Register of Wills consisted simply of a valuation of taxable items and did not assess or fix the amount of any tax, and there is no provision in the Act of 1919 which authorizes the Register of Wills to assess any tax; again, in the opinion of this court (this book page 12) it is stated that the balance in the account was awarded to the distributees, whereas, in point of fact, there was no distribution made of any money by the decree of distribution other than to the Commonwealth of Pennsylvania for the amount of this tax; the distribution of all the rest of the estate was suspended (See Consolidated Record page 74a).

This court misapprehended the point of the decisions rendered by the Supreme Court of the United States notably in the cases of:

Maxwell vs. Bugbee, 250 U. S., 525;

Bankers Trust Co. vs. Blodgett, 43 Supreme Court Reporter, 233,

upon which great stress is placed by this court in its opinion.

(b) It is respectfully suggested that, if the decision of this court, that the Act of 1919 levies an estate tax upon the whole estate and not upon the distributive shares, is adhered to, the Act will be found to be entirely unworkable because of the administrative provisions contained in it with reference to the collection of the tax and with reference to liens securing the payment of the tax. These administrative provisions can be applied only to cases where the tax is levied [fol. 366 & 367] upon the separate items of distribution. There is no provision in the Act making it the duty of the executors or any distributee to pay the tax as a whole, or authorizing them to do so.

(c) It is respectfully submitted that a reargument should be granted on what is known as the "Park Fund," for the reasons set forth by Mr. Justice Frazer in his dissenting opinion.

George Wharton Pepper, George B. Gordon, of Counsel for Petitioners.

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[fol. 368] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

ORDER OVERRULING PETITION FOR REARGUMENT AND ALLOWING WRIT OF ERROR—Filed June 23, 1923.

And now, to wit June 23rd, 1923, upon consideration of the petition of Adelaide H. C. Frick, et al. for the allowance of writs of error from the Supreme Court of the United States it is ordered, adjudged and decreed as follows:

First. That the motion for reargument made in these causes be and the same is hereby overruled and dismissed.

Second. That the prayer of said petition be and the same is hereby granted and that a writ of error issue as prayed for and that the said petitioners have leave to bring up for review before the Supreme Court of the United States the final judgment of this Court heretofore entered in said causes.

Rob't. von Moschzisker, Chief Justice.

[fol. 369] [File endorsement omitted.]

[fol. 370]

June 19, 1923.

Service acknowledged and ten days' notice waived of presentation to the Court on Saturday June 23, 1923.

David A. Reed, for the Commonwealth.

[fol. 371] UNITED STATES OF AMERICA, ss:

SUPREME COURT OF PENNSYLVANIA

CERTIFICATE OF LODGMENT

I, Pier Dannals, Prothonotary of the said court for the Western District thereof, do hereby certify that there were lodged with me as such prothonotary on June 25, 1923, in the matter of Helen C. Frick, Plaintiff in Error v. Commonwealth of Pennsylvania, assignment of errors and prayer for reversal, and original bond, of which a copy is herein set forth, and on July 10, 1923, the original writ of error and a copy thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Pittsburgh, Pennsylvania, this 13th day of July, 1923.

Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania for the Western District.

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[fol. 372] IN THE SUPREME COURT OF PENNSYLVANIA

SUPERSEDEAS BOND—Filed June 25, 1923

Know all men by these presents, That we, Helen C. Frick, of the City of Pittsburgh, Allegheny County, Pennsylvania, as Principal, and American Surety Company of New York, a corporation of New York, as Surety, are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of fifty thousand dollars (\$50,000) to be paid to the said The Commonwealth of Pennsylvania, its certain attorney, successors or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. Sealed with our seals and dated this 25th day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Whereas, lately at a session of the Supreme Court of Pennsylvania in a suit depending in said Court in re estate of Henry C. Frick, deceased, wherein Helen C. Frick was appellant and The Commonwealth of Pennsylvania was appellee at No. 42 October Term, 1923, a judgment was rendered against the said Helen C. Frick by the said Court, and said Helen C. Frick having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania citing and admonishing it to be and appear at a Supreme Court of the United States at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Helen C. Frick shall prosecute said writ of error to effect, and answer all damages and costs if she shall fail to make her plea good,

then the above obligation to be void; else to remain in full force [fol. 373] and virtue.

Helen C. Frick. (Seal.) American Surety Company of New York, By A. A. Rohrich. A. A. Rohrich, Resident Vice President. Attest: A. C. McDonald. A. C. McDonald, Resident Assistant Secretary. (Seal.) Sealed and delivered in presence of: J. E. Trindle.

Bond approved, and to operate as a supersedeas By Robert von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania.

[File endorsement omitted.]

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[fol. 374] WRIT OF ERROR—Filed July 10, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Pennsylvania before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in re Estate of Henry C. Frick, deceased, Appeal of Helen C. Frick, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, [fol. 375] or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Helen C. Frick, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 25th day of June, in the year of our Lord one thousand nine hundred and twenty-three.

J. Wood Clark, Clerk of the District Court of the United States, West. Dist. of Pennsylvania. [Seal of U. S. District Court, W. D. Pennsylvania.]

Allowed by Rob't von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania.

[fol. 376] [File endorsement omitted.]

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[fol. 377] UNITED STATES OF AMERICA,  
Supreme Court of Pennsylvania, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In Witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of Pennsylvania, at the City of Pittsburgh, this 13th day of July, 1923.

Pier Dannals, Prothonotary of the Supreme Court of Pennsylvania for the Western District.

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[fol. 378] CITATION AND SERVICE—Filed July 10, 1923

UNITED STATES OF AMERICA, ss:

To Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Office of the Prothonotary of the Supreme Court of Pennsylvania, for the Western District thereof, where Helen C. Frick is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania, this twenty-fifth day of June, in the year of our Lord one thousand nine hundred and twenty-three.

Rob't von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania.

Pittsburgh, Pennsylvania, July 9, 1923.

I, the attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

David A. Reed, Atty. for the Commonwealth of Pennsylvania.

[fol. 379] [File endorsement omitted.]



[fol. 380] In the Supreme Court of the United States

[Title omitted]

Writ of Error from the Supreme Court of the United States to the Supreme Court of Pennsylvania re Judgment and Decree of the Supreme Court of Pennsylvania at No. 42, October Term, 1923

PRACIPE AND STIPULATION AS TO THE PORTIONS OF THE RECORD TO BE INCORPORATED INTO THE TRANSCRIPT OF THE RECORD—Filed June 25, 1923

To the Prothonotary of the Supreme Court of Pennsylvania for the Western District:

It is hereby stipulated and agreed between the plaintiff in error and the defendant in error that the portions of the record which shall be incorporated into the transcript of the record on this writ of error shall be as follows:

1. Those portions of the printed "Consolidated Record" of the Supreme Court of Pennsylvania which begin with the docket entries on page 1-a to and including the order of court dated February 2, 1922, on page 33-a of said Consolidated Record.

2. Those portions of the Consolidated Record beginning at page 36-a and ending with page 49-a inclusive.

3. Those portions of the Consolidated Record beginning with page 51-a and ending with the order of court of September 13, 1922, on page 67-a.

[fol. 381] 4. Those portions of the Consolidated Record beginning with the opinion of the court of December 5, 1922, on page 67-a and ending with the order of the court at the bottom of page 71-a of said Consolidated Record.

5. That portion of the Consolidated Record beginning at the top of page 109-a and extending to the beginning of the testimony of William Watson Smith on page 109-a.

6. That portion of the Consolidated Record beginning at the top of page 120-a and extending to the bottom of page 127-a.

7. That portion of the Consolidated Record beginning at the top of page 132-a entitled "Exhibit A" of Exhibit No. 1 and extending to the end of said Exhibit 1 on page 161-a.

8. That portion of "Exhibit C" attached to Exhibit No. 1 beginning at the top of page 163-a and extending to the bottom of page 166-a of said Consolidated Record.

9. That portion of the Consolidated Record identified as "Statutes" beginning at the top of page 182-a and extending to the bottom of page 228-a.

10. Docket entries in the Supreme Court of Pennsylvania.
11. Assignments of error in the Supreme Court of Pennsylvania.
12. Opinion and dissenting opinion of the Supreme Court of Pennsylvania and the final decree entered by said court.
13. Petition for Writ of Error, Assignments of Error, and Prayer for Reversal.

George B. Gordon, Of Counsel for Plaintiff in Error. David A. Reed, Of Counsel for Defendant in Error. July 3rd, 1923.

[fol. 382] [File endorsement omitted.]

[fol. 383] IN SUPREME COURT OF PENNSYLVANIA

#### CHIEF JUSTICE'S CERTIFICATE

I, Robert Von Moschzisker Chief Justice of the Supreme Court of Pennsylvania, do certify, that Pier Dannals was at the time of signing the annexed attestation and now is Prothonotary of the said The Supreme Court of Pennsylvania, in and for the Western District, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this thirteenth day of July in the year of our Lord one thousand nine hundred and twenty-three.

Rob't Von Moschzisker.

IN SUPREME COURT OF PENNSYLVANIA

#### CLERK'S CERTIFICATE

I, Pier Dannals, Prothonotary of The Supreme Court of Pennsylvania in and for the Western District, Do Certify, that the Honorable Robert Von Moschzisker by whom the foregoing Certificate was made and given, was at the time of making and giving the same and is now Chief Justice of The Supreme Court of Pennsylvania; to whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Western District, at Pittsburgh, this thirteenth day of July in the year of our Lord one thousand nine hundred and twenty-three.

Pier Dannals. [Seal of the Supreme Court of Pennsylvania.]

[fol. 384] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 443

HELEN C. FRICK, Plaintiff in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant in Error

STIPULATION THAT RECORD IN NO. 443 NEED NOT BE PRINTED AND THAT CASE BE HEARD ON RECORD IN NO. 442—Filed July 28, 1923

Counsel for the plaintiff in error and counsel for the defendant in error agree that the record in the above entitled case at No. 443 October Term, 1923 need not be printed and that this case be heard on the record in the case of Helen C. Frick, Plaintiff in error, against Commonwealth of Pennsylvania, Defendant in Error, at No. 442 October Term, 1923.

George B. Gordon, Attorney for Plaintiff in Error. David A. Reed, Attorney for Defendant in Error.

[fol. 385] [Endorsed:] No. 443 October Term, 1923. Helen C. Frick, Plaintiff in Error, vs. Commonwealth of Pennsylvania, Defendant in Error. Stipulation of Counsel.

[fol. 386] [File endorsement omitted.]

[fol. 387] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 444

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. McEldowney, and William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased, Plaintiffs in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant in Error

STIPULATION THAT RECORD IN CASE NO. 444 NEED NOT BE PRINTED, AND THAT CASE MAY BE HEARD ON RECORD IN NO. 442—Filed July 28, 1923.

Counsel for the plaintiffs in error and counsel for the defendant in error agree that the record in the above entitled case at No. 444 October Term, 1923 need not be printed and that this case may be heard on the record in the case of Helen C. Frick, Plaintiff in Error,

against Commonwealth of Pennsylvania, Defendant in Error, at No. 442 October Term, 1923.

George B. Gordon, Attorney for Plaintiffs in Error. David A. Reed, Attorney for Defendant in Error.

[fol. 388] [Endorsed:] No. 444 October Term, 1923. Adelaide H. C. Frick, et al., Executors of the last will and testament of Henry C. Frick, deceased, Plaintiffs in Error, vs. Commonwealth of Pennsylvania, Defendant in Error. Stipulation of Counsel.

[fol. 389] [File endorsement omitted.]

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[fol. 390] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 445

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. McEldowney, and William Watson Smith, Executors of the Last Will and Testament of Henry C. Frick, Deceased, Plaintiffs in Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.

STIPULATION THAT RECORD IN CASE NO. 445 NEED NOT BE PRINTED AND THAT CASE BE HEARD ON RECORD IN No. 442—Filed July 28, 1923

Counsel for the plaintiffs in error and counsel for the defendant in error agree that the record in the above entitled case at No. 445 October Term, 1923 need not be printed and that this case may be heard on the record in the case of Helen C. Frick, Plaintiff in Error, against Commonwealth of Pennsylvania, Defendant in Error, at No. 442 October Term, 1923.

George B. Gordon, Attorney for Plaintiffs in Error; David A. Reed, Attorney for Defendant in Error.

[fol. 391] [Endorsed:] No. 445 October Term, 1923. Adelaide H. C. Frick et al., Executors of the last will and testament of Henry C. Frick, deceased, Plaintiffs in Error, vs. Commonwealth of Pennsylvania, Defendant in Error. Stipulation of Counsel.

[fol. 392] [File endorsement omitted.]

Endorsed on cover: File No. 29,752. Pennsylvania Supreme Court. Term No. 442. Helen C. Frick, plaintiff in error, vs. Commonwealth of Pennsylvania. Filed July 21st, 1923. File No. 29,752.



FILE COPY

SEP 21 1923

WM. R. STANLEY

# Supreme Court of the United States

122

NO. ~~112~~ OCTOBER TERM, 1923.

HELEN C. FRICK, Petitioner,

VS.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

A Writ of Error has been allowed in this case by the Chief Justice of the Supreme Court of Pennsylvania and docketed at this number and Term. This petition for certiorari is filed in the case to meet the possible contingency that the questions involved cannot be heard on writ of error.

✓  
✓ GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
Attorneys for Petitioner.





## **Notice of Application for Writ of Certiorari.**

Notice is hereby given that the above named petitioner will, on Monday, October 1st, 1923, at the opening of the Court, or as soon thereafter as counsel can be heard, present her verified petition, which has been filed in the office of the Clerk of the Court, and a copy of which is hereto annexed, together with copy of the entire record in this cause, to the Supreme Court of the United States, at the Court rooms in the Capitol in the City of Washington, D. C., and will, at such time and place, move the Court to issue its writ of certiorari to the Supreme Court of the State of Pennsylvania to review the decision of said Court rendered in the above named cause.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,

*Attorneys for Petitioner.*

Dated September 17, 1923.

To:

COMMONWEALTH OF PENNSYLVANIA,  
HON. GEORGE W. WOODRUFF,  
Attorney General.

HON. DAVID A. REED,

Attorneys for the Commonwealth of  
Pennsylvania.

# THE HISTORY OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT IN 1630  
TO THE PRESENT TIME  
BY  
JOSEPH H. B. STODOLSKY  
Author of "The History of the City of New York"  
and "The History of the City of Philadelphia"

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# Supreme Court of the United States

NO. 442 OCTOBER TERM, 1923.

HELEN C. FRICK, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## **Petition for Writ of Certiorari to Review a Decision of the Supreme Court of Pennsylvania.**

*To the Honorable The Supreme Court of the United  
States:*

The petition of Helen C. Frick respectfully shows:

1. In the matter of the estate of Henry C. Frick originally in the Orphans' Court of Allegheny County, Pennsylvania, an adjudication was made as to the transfer inheritance (estate) taxes due the State of Pennsylvania from the estate of Henry Clay Frick, who was a citizen of Pennsylvania and domiciled there at the time of his death. Your petitioner is a daughter of Mr. Frick, has her domicile in Pittsburgh, Pennsylvania, and is one of the executors of and a residu-

ary legatee under his will. The executors of Mr. Frick's will paid voluntarily to the Commonwealth of Pennsylvania the sum of \$1,978,949.71, which they claimed was the amount payable as a transfer inheritance tax to the State. The Commonwealth of Pennsylvania claimed that it was entitled to the additional sum of \$1,188,248.16. About one-half of this additional amount was arrived at by adding to the taxable value of the estate, as returned by the executors, the value of tangible articles of personal property (that is, Mr. Frick's art collection and household furniture), which were located at the time of his death in his residences in the States of New York and Massachusetts and upon which inheritance taxes had been paid to the States of New York and Massachusetts, respectively, to the extent that they were taxable under the estate tax laws of those states. Your petitioner claimed that it was beyond the power of the State of Pennsylvania to levy any inheritance tax upon those articles and that said tax constituted a violation of the Fourteenth Amendment. The remainder of the increased amount of tax was caused by the disallowance by the Orphans' Court of Allegheny County (in ascertaining the taxable value of the residuary estate) of certain deductions claimed by the executors, which consisted of estate and inheritance taxes paid to the United States and some eighteen of the states constituting the United States and to the Province of Quebec (upon real estate located in those states and shares of stock of corporations incorporated under the laws of those states). Your petitioner claimed that the failure to allow these deductions in ascertaining the taxable value of the residuary estate

was a violation of the Constitution and laws of the United States.

Petitioner prosecuted an appeal to the Supreme Court of Pennsylvania and said court decided the questions adversely to petitioner's contention. There are seven justices of the Supreme Court of Pennsylvania, of whom five participated in the argument and the decision. One justice was ill and one was disqualified for the reason that he had been Attorney General of the State and counsel for the Commonwealth at the the time this controversy originated. The opinion of the court was rendered by Justice Simpson and concurred in by Chief Justice Von Moschzisker and Justices Walling and Kephart. Justice Frazer filed a dissenting opinion. Your petitioner made an application to the Supreme Court of Pennsylvania for the allowance of a writ of error from this court. The Supreme Court of Pennsylvania held that this was a proper case for the allowance of a writ of error and the writ was allowed by Robert Von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania. The writ of error was duly sued out and has been filed in this court and docketed at this number and term. While petitioner has been advised by her counsel that in their opinion this is a case which can properly be brought to this court by a writ of error, she has also been informed that there is possibly some doubt as to whether the correct remedy is not by *certiorari*; and therefore your petitioner seeks to have this court review the decision hereinbefore referred to on *certiorari* in case it should be held that the case is not properly here upon a writ of error.



2. The first question involved in this litigation is whether the State of Pennsylvania did not exceed its power and jurisdiction when it passed this statute which as applicable to this case provides that there shall be included in the taxable value of the estate tangible articles of personal property located at the time of Mr. Frick's death in his two residences in New York City, New York, and Pride's Crossing, Massachusetts, and whether, in collecting an inheritance tax upon the value of those articles, it did not violate the due process clause of the Constitution of the United States.

3. Petitioner's next contention is that, when the Commonwealth of Pennsylvania, in ascertaining the tax which must be borne by the residuary legatees, refused to allow as a deduction from the taxable value of the estate the estate tax levied by the United States Government which had been paid to the amount of \$6,338,898.68, it violated clause 1 of section 8 of Article 1 of the Constitution of the United States in that it interfered with the power of Congress to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States and also clause 2 of Article VI of the Constitution of the United States in that it denied that the said Constitution and the laws of the United States made in pursuance, to wit, among others, sections 400 to 410, inclusive, of an Act of Congress of the United States, entitled "An act to provide revenue and for other purposes," approved February 24, 1919 (40 Stat., pp. 1096-1101) and section 3467 of the United States Revised Statutes, are the supreme law of the

land and that the judges in every state are bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding, and also clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprived your petitioner of property without due process of law and also denied to her the equal protection of the law.

4. Petitioner's next contention is that so much of the judgment of the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania as directs the payment of the tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid to other states on the transfer of real estate in other states will deprive petitioner of her property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

5. Petitioner's next contention is that so much of the tax authorized and directed to be paid by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania as includes a tax on the estimated value of the estate, without a deduction of inheritance taxes paid other states on the transfers of shares of stocks of corporations incorporated under the laws of those states, will deprive your petitioner of her property without due process of law and will deprive her of

the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

6. Your petitioner's next contention is that, in so far as the decree of the Orphans' Court of Allegheny County and of the Supreme Court of Pennsylvania distributes to the Commonwealth of Pennsylvania a sum of money which includes a tax on the estimated value of the estate without a deduction of the Pennsylvania inheritance tax from the estimated value of the gross estate the effect of such action is to increase the taxable value of the residuary estate, and your petitioner, as one of the residuary legatees is deprived of her property and the said tax is invalid on the ground of its being repugnant to section 1 of the Fourteenth Article of amendment to the Constitution of the United States in that it deprives your petitioner of property without due process of law and also denies to her the equal protection of the laws.

7. The facts upon which this controversy arises are as follows: Mr. Henry Clay Frick died in the City of New York on the 2nd day of December, 1919. He left a last will and testament dated the 24th day of June, 1915, probated on December 6, 1919, in the office of the Register of Wills of Allegheny County and of record in Will Book Volume 160, page 6. This will is in writing. It was subscribed at the end by Mr. Frick in the City of Pittsburgh, Pennsylvania. It was attested by the written signatures of three citizens of Pittsburgh and was in Pittsburgh at the time of his death. Mr. Frick was born in the State of Pennsylvania and he was continuously domiciled in said State from his birth until his death.

Mr. Frick, at the time of his death, had three houses. One, known as Clayton, is located in the City of Pittsburgh, Pennsylvania. It was acquired by him soon after his marriage and given (conveyed) by him shortly thereafter to his wife. This was his legal domicile, so denominated by him when he registered every year as a voter in the voting precinct and ward of the City of Pittsburgh in which the house is situated. Another of his residences was a house at Pride's Crossing in the State of Massachusetts. By his will he devised to his wife a life estate in this property and the remainder to his daughter, your petitioner. He bequeathed to his wife all the tangible personal property (furniture, pictures, etc.) located in and about this residence. The taxing authorities of the State of Pennsylvania did not attempt to include the value of this real estate in Mr. Frick's taxable property, but they included the value of the tangible personal property located there at a valuation of \$325,534.25 and levied a transfer inheritance estate tax thereon. This levy has been sustained by the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania, the court of last resort.

Mr. Frick also owned another residence on Fifth Avenue in the City of New York, the land and buildings being of the value of upwards of \$3,000,000. This residence he devised to a charitable corporation of the State of New York known as "The Frick Collection," but he gave his wife the right or license to use it "so long as she should occupy the same as one of her residences." The State of Pennsylvania has not attempted

to tax this real estate, although the Act, the constitutionality of which petitioner is here attacking, directs such a levy to be made. Contained in this residence was Mr. Frick's collection of paintings, antique furniture and other objects of art. These he bequeathed to said corporation of the State of New York known as "The Frick Collection," with the mandatory provision that the collection should always be retained and maintained in said residence for the use and benefit of all persons whomsoever. This residence also contained certain other furniture, household supplies, etc., which were not a part of the Frick Collection. These Mr. Frick bequeathed to his wife. The State of Pennsylvania valued the articles of personal property comprising "The Frick Collection" at \$13,132,391, and valued the rest of the tangible personal property (furniture, etc.) that was in this residence and garage adjacent thereto at \$77,818.75. The Commonwealth included these valuations in its estimate of the taxable value of the estate and levied a tax thereon. Your petitioner contends that these articles of tangible personal property were beyond the dominion of the State of Pennsylvania, and that the Pennsylvania Act, in so far as it authorized and directed a tax to be levied on them, is a violation of the Constitution of the United States, has the effect of reducing the residuary estate by upwards of \$600,000, and deprives petitioner, as one of the residuary legatees, entitled to thirteen per cent,—the rest went to charity—of her property.

The balance of the tax in controversy in this case, amounting to upwards of \$500,000, was caused by the

refusal of the State of Pennsylvania (in accordance with the mandate of the statute as it was construed by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania) to deduct from the total taxable value of the estate before levying the tax four items: (a) estate taxes paid to the United States which were a paramount lien upon the whole estate; (b) transfer inheritance estate taxes paid to other states upon real estate located in those other states; (c) transfer inheritance taxes paid to other states and to the Dominion of Canada upon shares of capital stock of corporations organized under the laws of those states and the Dominion of Canada, which were a paramount lien upon those shares and where the shares could not be reduced to possession by the executors or over which no act of dominion could be exercised by them until such foreign taxes were paid, and (d) the inheritance taxes imposed by the State of Pennsylvania upon the general and specific devises, which taxes, so paid, amounted to \$1,925,247.61 (which will be increased if this decision of the Supreme Court of Pennsylvania stands by the additional amount of \$1,200,000).

Some of these taxes by the law and all of them by the terms of Mr. Frick's will are thrown upon the residuary estate.

Your petitioner contends that all of the additional Pennsylvania estate taxes were imposed in violation of her rights under the Constitution of the United States:

8. Therefore:

THE FUNDAMENTAL QUESTIONS INVOLVED  
IN THE CASE ARE

(1) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication made in this case in conformity with it impose a transfer inheritance tax on tangible articles of personal property located at the time of their owner's death in Massachusetts and New York, has not the Commonwealth exceeded its power, and do not the statute and the adjudication violate the Constitution of the United States?

The tangibles in Massachusetts were located at the testator's summer home at Pride's Crossing. They were given by the will to Mrs. Frick and consisted of paintings, furniture, household stores, farm implements, etc. The tangibles in New York were located at the testator's New York house. They were given by the will in part to Mrs. Frick and in part to the Frick Collection, a charitable corporation of the State of New York, which the testator by his will directed to be formed for the purpose of receiving them, and to which he devised the New York house. The tangibles given to the corporation consisted of decedent's paintings, antique furniture and other objects of art which were contained in the New York house and were bequeathed with the provision that they must remain in that build-



ing forever. The tangibles given to Mrs. Frick consisted of the contents of the New York house, other than the art collection, such as household stores, etc., and the contents of the garage, such as automobiles, tools, etc.

(2) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication in this case made in conformity with it imposes a transfer inheritance tax to be paid by the residuary legatees and devisees without a deduction from the gross estate of the amounts paid (a) to the United States as an estate tax; (b) to other states as taxes on real estate; (c) to other states as taxes on the transfer of shares of stock of corporations of those states; and (d) to the Commonwealth of Pennsylvania as inheritance taxes on general and specific legacies, does not said act exceed the power of the Commonwealth of Pennsylvania and violate the Constitution of the United States?

Petitioner contended in the Pennsylvania courts that the Pennsylvania Inheritance Tax Law of 1919, under which this tax was levied, imposes a succession tax which applies only to the bequests received by the various beneficiaries. The Supreme Court of Pennsylvania has decided to the contrary; that is, it has decided that this act imposes an estate tax and not a succession tax. Petitioner concedes that the decision of the Pennsylvania courts upon the meaning of the statute is not reviewable here. The Pennsylvania inheritance tax act, as construed by the Pennsylvania courts, imposed an estate tax upon the whole property, real and personal, of which the decedent died seized, wherever situate, and allowed deductions to be made only for

debts of the decedent and administration expenses. The tax imposed by the act, however, is not uniform, but is classified according to the relationship of the beneficiaries to the deceased. Under this statute, the bequests to Mr. Frick's wife and his lineal descendants were subject to a two per cent. tax. All other devises and bequests were subject to a five per cent. tax. The Pennsylvania act contains no exemption for charities.

In order to assess the tax at the different rates, admittedly a difficult if not impossible thing to accomplish, where the tax is levied upon the decedent's whole estate and not upon the gifts to the beneficiaries, the taxing authorities adopted the following method, which the Supreme Court of Pennsylvania by affirming the decision of the Orphans' Court of Allegheny County has sustained.

This is the way they made their levy. They first took the values of all the real estate in Pennsylvania specifically devised (except the devise to the City of Pittsburgh for a park which was not taxable) and of all the personal property specifically bequeathed, wherever situate, and calculated a tax on them at the rate of either two or five per cent. They then took from the will the amounts of the general legacies and assessed a tax on those at the proper rates. This brought the calculation to a point where they had found the value of the real estate in Pennsylvania and all the other property disposed of by the will, except the residuary estate, to be \$55,783,794. This it will be understood is the sum of the general and specific bequests and devises (excluding real estate outside of Pennsylvania). They then fixed the value of the entire estate,

excluding real estate outside of Pennsylvania, at \$89,675,098.45. From this total valuation they subtracted the sum of the specific devises and bequests and reached a residue of \$33,891,304.45. From this they deducted the estimated administration expenses and debts of the decedent amounting to \$9,187,177.90, leaving an estimated balance of \$24,704,126.55, which the Orphans' Court of Allegheny County has christened "the net residuary estate." The taxing authorities then proceeded to tax thirteen-hundredths of this so-called net residuary estate at two per cent. because it is bequeathed to your petitioner, who is a daughter of the decedent, and eighty-seven-hundredths at five per cent. because under the will it goes to various charities. These two sums they added to the tax on the specific and general devises and legacies, which gives an aggregate amount of \$3,064,107.85. Deducting \$1,978,949.71 previously paid by the executors on account, and adding \$103,090.02 interest, they arrived at a total unpaid tax claim of \$1,188,248.16. This is the amount for which the Orphans' Court of Allegheny County entered judgment. The Supreme Court of Pennsylvania on appeal by the Commonwealth added \$100,000 (and interest thereon) to this amount, being a tax of five per cent. on what is known as the Park Endowment Fund of \$2,000,000, which the court below had found was not taxable.

The actual net residuary estate is not this fictitious amount of \$24,704,126.55 arrived at as shown above. There is no such amount of money in the residuary estate, and the residuary legatees will never get it.

The amount of money actually in the residuary estate is this estimated amount less \$6,338,898.68 paid to the United States as Federal inheritance taxes, less \$1,084,459.42 paid to other states and countries as taxes, less \$1,978,949.71 paid to the Commonwealth of Pennsylvania as inheritance taxes, that is to say, less a total sum of \$9,402,307.81. So the actual residuary estate now in the hands of the executors is only \$15,301,818.74. Moreover, if this decision of the Supreme Court of Pennsylvania stands, the residuary estate will be still further reduced by about \$1,300,000, additional Pennsylvania taxes that will have to be paid; and, if the Commissioner of Internal Revenue is successful in the contention he is making for additional United States estate tax, it will be reduced by the further sum of \$3,100,000. This will bring the real value of the residuary estate down to about \$10,901,818.74. So that the actual net residuary estate, which it may be assumed the residuary legatees will receive, if it is not still further depleted by taxes, is not twenty-five million dollars, but between eleven and fifteen million dollars.

Petitioner avers that she is deprived of her property without due process of law when, under the mandate of the Pennsylvania statute as construed by the court, she is compelled to pay an inheritance tax figured upon a residuary estate, arbitrarily assumed or ordered or decreed to be twenty-five million dollars, but which, in point of fact, is only somewhere between eleven and fifteen million dollars.

9. While your petitioner has been advised by counsel that the writ of error which has been allowed

in this case is her proper remedy under the decisions of this court (see *Eureka Pipe Line Company vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Company vs. Hallanan*, 257 U. S., 277; *Dahnke-Walker Milling Company vs. Bondurant*, 257 U. S., 282), if the court should be of the opinion that the questions involved in this case cannot properly be raised upon a writ of error, then petitioner respectfully submits that a writ of *certiorari* should be granted in this case for the following reasons:

(a) Because the decision of the highest court of the State of Pennsylvania involves federal questions which were clearly raised in every court and at all stages of the proceedings and were definitely decided and passed upon adversely to petitioner's contention by the opinion and decree of the highest court of the state, to wit, the Supreme Court of Pennsylvania;

(b) The federal questions involved are questions of general and great importance and have never been decided by this court;

(c) There is a conflict between the decisions of the courts of last resort of various states as to whether or not the state in which a decedent was domiciled at the time of his death may lawfully levy an estate or succession tax upon tangible articles of personal property situate in some other state. This question, which depends upon the United States Constitution, has never been decided by any federal court.

(d) The intense pressure for money to use for governmental purposes is felt by each of the states of the Union, as well as by the government of the United States. In response to this pressure, several states are

developing a tendency to reach out beyond their limits and subject to taxation, for their own purposes, property which all will admit is subject to taxation by the state of its situs. Such a situation tends to chaos. The present situation is that inheritance taxes are being levied by the federal government, by the state wherein the decedent was domiciled, by the state in which his real estate was located, by the state in which his tangible personal property was located, by the state where the corporation in which he owned stock was domiciled, by the state in which his debtor was domiciled, by the state in which some railroad corporation domiciled in some other state has a line of tracks, and so on indefinitely. There should be an authoritative decision of this court as to whether or not the state of the domicile can levy an estate tax on the furniture in a summer residence which the decedent owned in some other state. That is one of the questions involved in this case. The more important one as to the money involved is, Can Pennsylvania levy an estate tax on Mr. Frick's great art collection which is located in New York and which can never be removed therefrom or brought into Pennsylvania?

(e) There is a conflict between the decisions of the States of Pennsylvania and New York as to the construction of a New York statute.

The Supreme Court of Pennsylvania in this case says that the New York statute which limits the proportion of the estate which the decedent may give to charity (this is a vital question involved in the present controversy bearing upon the point whether the be-

quest known as The Frick Collection passed under Mr. Frick's will or whether it passed under the release or assignment executed by his widow and children after his death) does not apply to property in New York belonging to a Pennsylvania citizen. (See Justice Simpson's opinion (page 38 of this book), beginning with the sentence, "These (New York statutes) relate, however, only to wills of testators there domiciled \* \* \*"; whereas, the Court of Appeals of the State of New York has decided that the statute applies to property in the State of New York, of which a decedent, who was a citizen of another state, died seized: *Decker vs. Vreeland*, 220 N. Y., 326.

(f) It is submitted that the controlling reason given by the Supreme Court of Pennsylvania for sustaining the constitutionality of this act, by which the State of Pennsylvania levied this tax on tangible articles of personal property located outside the state (which act requires the levying of an inheritance tax upon all property, real and personal, wherever situate, which belonged to any person domiciled in Pennsylvania), is unsound. The reason advanced by the court is that, because "the property being distributed on this proceeding is all in this state; appellants are our citizens and duly appeared and contested the claim of the Commonwealth, \* \* \*," and as the court has jurisdiction over the person who raises the question (that is your petitioner, one of the residuary legatees, who is a citizen of Pennsylvania), and the decedent, the State having jurisdiction over both—the decedent having been and appellants being now domiciled in the State, and the latter appearing to the action, all the



property now being distributed being within the State and a valid state statute lawfully imposing the tax the United States Constitution has no bearing upon the case. (See Justice Simpson's opinion, this book, pages 30 and 31.)

Your petitioner is entitled to thirteen-hundredths of the residuary estate; the rest of the residuary estate goes to charity. Under the construction placed upon this act by the Pennsylvania Supreme Court to wit, that it is an estate tax, as well as under the provisions of Mr. Frick's will, the burden of the whole of these inheritance taxes is cast upon the residuary legatees. Fifty-three per cent. of the residuary estate goes to Princeton University, Harvard College, Massachusetts Institute of Technology and the Society of the Lying-in Hospital of the City of New York, none of which institutions are domiciled in Pennsylvania. The right of the State of Pennsylvania to impose the tax cannot be any different where the question is raised by petitioner, who is a citizen of Pennsylvania, from what it would be if it had been raised by Princeton University, a citizen of New Jersey. Besides this, the question was also raised by the executors who represent all the residuary legatees, resident and nonresident.

In *Koch's Estate*, 4 Rawle 268, the Supreme Court of Pennsylvania decided that the administrator could prosecute an appeal from a decree of distribution affecting the interests of legatees residing abroad.

(g) In ascertaining the value of the estate for the purpose of imposing a transfer inheritance *estate*

tax by the State of decedent's domicile, must there not under the Constitution and laws of the United States be deducted (1) the inheritance tax which the executors were compelled to pay foreign states under whose laws corporations in which decedent owned stock were incorporated, before said shares of stock could be reduced to possession by the executors; (2) the estate tax levied by the United States under the Acts of Congress; (3) the inheritance tax paid foreign states upon real estate located in such foreign states; (4) the inheritance *estate* tax levied by the State of Pennsylvania upon the general and specific legacies and devises. All these are questions of general importance and none of them have ever been decided by this court.

Wherefore, your petitioner respectfully prays that, if in the opinion of this Honorable Court a writ of error does not lie in this case, a writ of *certiorari* may issue out of it under the seal of this court, directed to the Supreme Court of Pennsylvania, commanding the said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in said Supreme Court of Pennsylvania in this case, to the end that the case may be reviewed and determined in this court as provided in section 240 of the Act of Congress designated as the Judicial Code, and the said decree of the said Supreme Court of Pennsylvania in this case and every part thereof may be reviewed by this Honorable Court and the decree of the Supreme Court of Pennsylvania may be reversed and the decision and

decree of the Orphans' Court of Allegheny County may also be reversed.

And your petitioner will ever pray.

HELEN C. FRICK,

*Petitioner,*

By

GEORGE WHARTON PEPPER,

GEORGE B. GORDON,

*Her Attorneys.*

State of ..... } ss:  
County of..... }

Helen C. Frick, being duly sworn, says that she has read the foregoing petition and knows the contents thereof and that the same is true as she is advised and believes.

.....  
Sworn to and subscribed before me, this ..... day  
of ....., 1923.  
.....

**Opinion of Majority of the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
FOR THE WESTERN DISTRICT

ESTATE OF HENRY C. FRICK, Deceased.

Appeals of THE COMMONWEALTH OF PENNSYLVANIA.	}	Nos. 39 and 40 October Term, 1923.
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Appeals of HELEN C. FRICK, a residuary legatee.	}	Nos. 42 and 44. October Term, 1923.
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Appeals of ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. McELDOWNEY and WILLIAM WATSON SMITH, Ex- ecutors of the last will and testament of HENRY C. FRICK, deceased, and HELEN C. FRICK, a residuary legatee.	}	Nos. 43 and 45. October Term, 1923.
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Six appeals from Decrees of the Orphans' Court of Alle-  
gheny County, as of December Term, 1920, No.  
476, and of March Term, 1922, No. 171.

**OPINION OF THE COURT.**

SIMPSON, J.

We are asked by these six appeals to review the action of the court below in determining the amount of inheritance tax due by the estate of Henry C. Frick, deceased, to this Commonwealth, of which he was a resident, and in which he was domiciled when he died

on December 21st, [2nd] 1919. A number of points are raised; some concern the interpretation of the Constitution of the United States or of this State; others the construction of our Inheritance Tax Act of June 20, 1919, P. L. 521; and still others the meaning of testator's will. The argument took a wide range, possibly because of a belief regarding the importance of the question raised, due partly to the large amounts involved; and perhaps also because of a conviction, in which the writer shares, that the State should have as part of its public policy, a refusal to tax any gift for a "purely public charity," since no valid reason can be given for taxing the public for the benefit of the public. Whatever appellants' reasons may be, however, we are compelled to follow along the lines of the able arguments presented, though this results in what would ordinarily be considered an unnecessarily long opinion.

By testator's will (so far as it need be considered here), he gave to certain trustees "all the books, pictures, paintings, \* \* \* antique or artistic furniture" \* \* \* contained in his dwelling house in New York City, to be held by them until a corporation, to be known as "The Frick Collection," should be formed, under the laws of the State of New York, when these articles should be transferred to it; he gave the rest of his personal property in said dwelling house, and also in his residence at Pride's Crossing, Massachusetts, to his wife "excepting, however, from this bequest, all articles of personal property" given to the trustees and corporation above stated; he gave to the city of Pittsburgh a tract of 151 acres of land "as a public park," and to the Union Trust Company of that City, the sum of \$2,000,000, the income therefrom to be used in "maintaining,

improving, embellishing and adding to the said park, and keeping the same in proper condition;" and he directed "that all inheritance, legacy, succession or similar duties or taxes, which shall become payable in respect to any property or interest passing under my will \* \* \* shall be paid out of the capital of my residuary estate," which, as found by the court below, amounted to \$24,704,126.55.

After the probate of the will, the executors paid to the United States the sum of \$6,338,898.68 being the Federal Estate Tax upon the property left by decedent; to various States and the Province of Quebec, the sum of \$1,084,459.42, being the inheritance taxes chargeable under their laws; to the State of New York the sum of \$131,000; and to this Commonwealth the sum of \$1,978,949.71, the inheritance tax which the estate admitted to be due. The governments specified do not concede the first three of these payments to be sufficient in amount; whether or not the last one is, is the question to be decided in this opinion.

By proper proceedings before the register of wills of Allegheny County, the amount of the tax due this State was found to be largely in excess of the sum already paid, whereupon the executors and one of the residuary legatees appealed to the orphans' court of the county, which determined a smaller amount was due, and later, on an adjudication of the executors' account, awarded to the Commonwealth the additional sum of \$1,188,248.16. It was reached by assessing the proper percentages on the total value of the real estate in Pennsylvania, and of the personalty wherever found (the valuations being agreed upon); the \$5,156,625.00 worth of realty located elsewhere not being considered or included.

From these two decrees the present appeals were taken; two of them by the Commonwealth, alleging additional taxes should have been assessed, and the other four by the executors and a residuary legatee, averring that too much was awarded. No claim was made upon the fund except by the State and the legatees; no creditor asked that distribution be delayed or a fund set apart to await a future adjudication of his claim; and no refunding bonds were required of the distributees, to whom the balance in the account was awarded. Hence, even if there are unpaid creditors, who hereafter present and prove their claims, they cannot, under our statutes, successfully maintain suits against the distributees or the executors, to obtain a refund of the sums paid by the latter to the former, on the faith of the court's decree, but can only have recovery against assets not appearing in the present account: Sections 49 (b) and 50 (a) and (b), Fiduciaries Act of June 7, 1917, P. L. 447, 515, 516-7.

The basic claim of the executors and residuary legatee being that the award is excessive, by reason of the fact that the court below improperly included, in the total valuation of the estate, certain of the assets left by testator, and mistakenly refused to allow certain credits against that valuation, in the natural order of consideration our first inquiry is: What does the Act of June 20, 1919, P. L. 521, under which the proceedings were had, provide regarding the tax and how it is to be calculated? Section 2 thereof provides, *inter alia*, that "In ascertaining the clear value of such (decedent's) estates, the only deductions to be allowed from the gross value of such estates shall be the debts of the decedent and the expenses of the administration of such estates,



and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or territory." And section 10 says: "The register of wills of the county, in which letters testamentary or of administration were granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed." \* \* \*

It is clear from these sections that the tax is to be levied upon "the clear value" of the entire estate (from which has been excluded, however, real estate located outside of Pennsylvania), after deducting only "the debts of the decedent and the expenses of the administration of such estates." The appraisement to be made is not of the legacies or devises but of the whole estate of a decedent; the debts and expenses of administration are not to be deducted from any particular gift or gifts, but from the whole estate, and the taxes paid to the United States or to any other State or territory, if permitted to be deducted, would have been from the whole estate. We therefore conclude that it is the entire value of the estate, less the credits specified, which forms the basis of the tax, and not the amounts received by the particular legatees; hence, as stated in *Knowlton vs. Moore*, 175 U. S., 41, that which the State "taxes is not the interest to which some person (or many) succeeds on a death, but the interest which ceased by reason of the death." Since this is the true construction of the Act, much of the argument made by these appellants, founded as it is upon the conten-

tion that the tax is levied only upon the particular gifts, when and as received, becomes ineffective because it has no relation to the actual status.

Basing their elaborate argument largely on their erroneous construction of the Act as last stated, the executors and residuary legatee who appeal, ask us to ignore the clear and unambiguous language of section 2, above quoted, and to decide that the court below erred "In ascertaining the clear value" of the estate, because it did not deduct from its "gross value" (a) The amount paid the Government for the Federal Estate Tax; (b) The amounts paid other States and the Province of Quebec for their inheritance taxes on decedent's real and personal property there located; and (c) The inheritance tax payable to this State. *Kirkpatrick's Estate*, 275 Pa., 271, is an express authority against the first of these claims; in principle it also decides the others adversely to these appellants. In deference to the able argument made, however, the supposedly new points presented will be briefly considered aside from that decision.

In support of their contention upon these points, they urge that refusal to allow those items to be deducted "adds the Federal tax, the tax paid to the other States," and that paid to this State, to the total valuation to which the tax rate is applied; this is erroneous. however, it simply refuses to allow those sums to be deducted from the "gross value of such estates" "In ascertaining the clear value" thereof, exactly as does the Federal Estate Tax Act (*New York Trust Co. vs. Eisner*, 256 U. S., 345, 349, 350), and many of the inheritance tax laws of other States. No valid reason is given why this may not be done. On the contrary, as stated in the

last cited case, where "the tax attaches to the estate before distribution,—if it is a tax on the right to transmit, or on the transmission at its beginning—obviously it attaches to the whole estate, except so far as the statute sets a limit."

Recognizing that their contention now being considered is in direct antagonism to the express language of the statute, these appellants in effect ask us to ignore this language, and from isolated phrases and words in the statute to reach an opposite conclusion, partially because of general expressions found in our opinions in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271,—though this question was not directly raised in either of them—apparently forgetting the basic rule that "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated": *Cohens vs. Virginia*, 6 Wheaton, 264, 397, per Marshall, C. J., *O'Malley vs. O'Malley*, 272 Pa., 536. Of course we cannot permit isolated expressions in a statute, or in any opinion of ours, to override the express language of the Act being construed.

It is further urged that there are constitutional objections to the provisions of the statute, if the deduc-

tions above referred to are not made. The only section of the Constitution of this State, which is supposed to affect the matter, is article IX, section 1, which provides that "all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." This, however, is not infringed, since the estates of all decedents are subjected to a uniform inheritance tax in all parts of the Commonwealth; and hence we turn to the provisions of the Federal Constitution, alleged to have been violated by the decree below, to see if they or any of them stand in the way of enforcing the statute as written.

The first claim regarding this is that it is "repugnant to clause 1 of section 8 of Article I of the Constitution of the United States, in that it interferes with the power of Congress to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." This is a veiled attack upon our dual form of government, and, in its ultimate analysis, would appear to be an attempt to deny to the States any right to exercise their taxing power upon subjects which the Federal Government may also tax. It needs no argument to show the error of such a contention. Moreover, there cannot be found anywhere within the four corners of the Act, in the practice under it, or in the decree below, the slightest evidence of a desire to interfere with the taxing powers of the United States.

It is further said that if the taxes paid the Government are not deducted our statute will be "repugnant \* \* \* also to clause 2 of Article VI of the Constitution of the United States, in that it denies that the said Constitution and the laws of the United States made in

pursuance thereof \* \* \* are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." In this day probably no one would deny the supremacy claimed; this court never has. The principle contended for is wholly inapplicable, however. Given the fact, that a State may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plumber vs. Coler*, 175 U. S., 115; *Orr vs. Gilman*, 183 U. S., 278), it necessarily follows that, in determining the way in which this tax shall be computed, it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other States. "The right to dispose of one's property by will, and the right to have it disposed of by the law, after decease, is created by statute, and therefore the State may impose such conditions upon the exercise of this right as it may determine" (*Banker's Trust Co. vs. Blodget*, decided by the Supreme Court of the United States January 22, 1923, and not yet officially reported); hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, "The power of taxation, with its accessorial sanctions, is a power of government, and all property is subject to it." If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her.

It is also contended that the refusal to make these deductions, and the inclusion of the value of the tangible personalty, located elsewhere than in Pennsylvania (which will be further considered hereafter), made the decree below "repugnant \* \* \* also to clause 1 of the 14th Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws." This contention is fully answered by what is said in *Keeney vs. New York*, 222 U. S., 525, 535: "The 14th Amendment does not diminish the taxing power of the State, but only requires that, in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the State of the Power to select the subjects of taxation. \* \* \* There can be no arbitrary or unreasonable discrimination;" but this can only arise (*Dane vs. Jackson*, 256 U. S., 589, 599) where the State tax law "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—'to spoliation under the guise of exerting the power of taxation,' " a situation not alleged to exist under our statute. If, however, we pass to separately consider the two branches of the Amendment, these appellants are not helped.

Upon the question of "due process of law," we have not been favored with a single specification regarding either the Act, or the practice under it. The property being distributed on this proceeding is all in this State; appellants are our citizens and duly appeared and con-

tested the claim of the Commonwealth; all the facts are agreed to; the law applicable thereto has been passed upon by the Orphans' court, all of whose judges are learned in the law, is now under review by this court, and, judging from the record, and the suggestion in the brief, will subsequently be scrutinized by the Supreme Court of the United States. Wherein then have these appellants been deprived of "due process of law?" We agree that "A tax can only be imposed by the State when it has either jurisdiction over a person or jurisdiction over his property;" here it has jurisdiction over both, decedent having been and appellants being domiciled in the State, the latter appearing to the action, all the property now being distributed being within the State, and a valid State statute lawfully imposing the tax. Under such circumstances, it is only when the State does not "provide a fair opportunity for submitting the issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts," that the conclusion reached "is void because in conflict with the due process clause:" *Ohio Valley Water Company vs. Ben Avon Borough*, 253 U. S., 287, 289.

Nor is there any definite allegation as to how the estate is deprived of the equal protection of the laws, though this is asserted over and over again, not only in regard to the refusal to allow the deduction of the items specified, but also, as above stated, in regard to the inclusion of the value of the tangible personal property located outside of Pennsylvania. If the estate has been deprived of the "equal protection of the laws," since all the facts are agreed to, it should be easy to point out exactly how this is so. What has Pennsylvania done



which operates to "deny to any person within its jurisdiction the equal protection of the laws?" These executors and residuary legatees are accorded exactly the same protection given by this statute to every other person within its jurisdiction. Since then "the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied \* \* \* (because) the law operates 'equally and uniformly upon all persons in similar circumstances'": *Billings vs. Illinois*, 188 U. S., 97, 103. It would be of no moment, even if it is the fact, that double taxation may result, so far as regards the tangible personalty located in New York and Massachusetts (*Blackstone vs. Miller*, 188 U. S., 189; *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S., 54), for, if this is the case, every one else in like situation will be doubly taxed.

Two of the contentions made by these appellants are entitled to some further consideration. It is clear that neither testator nor any other decedent can, by his will, alter the amount which the Commonwealth is entitled to receive, save to the extent the statute itself specifies, that is, where the gifts are to a "father, mother husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof \* \* \* or from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow (or) passing from an illegitimate child to his mother" (these being commonly called direct inheritances), but two per centum is to be charged upon the value thereof, and where the gifts are to collaterals,—which include all distributees

except those above specified,—five per centum is to be charged upon the value thereof. It necessarily follows that the direction of the present will “that all inheritances \* \* \* taxes \* \* \* shall be paid out of the capital of my residuary estate,” can have no effect in reducing the amount of tax to be paid to this State, but only operates, as between the two classes of gifts, to fix the ultimate payment upon the residuary devisees and legatees, in relief of the others, each of whom, but for that clause, would suffer an abatement of his or her devise or bequest, to the extent of the tax imposed upon its value. If this was not so, and a testator was permitted to reduce the amount payable to the State, by simply charging upon the residuary estate all the taxes paid elsewhere, the sovereign power of the State to impose them as it pleases, subject only to the requirement of equality and uniformity, would have to be made subject also, in this class of cases, to the unrestrained directions of a testator. Under such circumstances, a decedent who had a relatively large amount of property elsewhere, might, by the device stated, greatly embarrass and perhaps largely or wholly defeat the claim of the domiciliary State, even upon the value of the personalty within her own borders.

The inequity of this contention is particularly apparent as to the tax of other States on the realty located therein, the value of which is not considered in determining the amount of our inheritance tax. We fully agree with the contention of these appellants that it would be “quite preposterous to say that the State of Pennsylvania has any jurisdiction to impose a tax upon the tax which is paid to the foreign state upon the transfer of foreign real estate.” In the absence of a

statutory provision so authorizing, however, it would be at least equally preposterous to say that a legatee can have deducted from the actual value of the property in our State, which he inherits, the amount he or some one else pays some other State, upon the realty there situated, and pay our tax only on the difference and this, and not the imaginary levying of "a tax upon the tax which is paid to the foreign State," is the actual situation.

As to the inheritance tax paid to this State, we may further say that the Act discloses no trace of a purpose to permit the deduction of the tax itself, in order to determine the valuation upon which the tax is to be levied. On the contrary, section 16 expressly provides that before paying any legacy the "executor or administrator, or other trustee \* \* \* shall deduct (the tax) therefrom at the rate of two per centum upon the whole legacy (if the inheritance is direct) \* \* \* and at the rate of five per centum upon the whole legacy," if the inheritance is collateral. Hence it is palpably erroneous to say that the percentage to be levied on the "clear value of such estate," as calculated in the manner provided by the statute, should not be levied thereon, but on a sum which is that "clear value" less the tax itself; that is, in the case of direct inheritance on 98 per cent. of that value, and in the case of collaterals on 95 per cent. of it. Doubtless the legislature could thus provide, but it has not, and, so far as we are aware, no other legislature ever has pursued that course.

The next contention is that the tangible personal property given to the widow, and also that which was to become part of "The Frick Collection," is not subject

to this tax, because situated in other States than Pennsylvania. Every one concedes those assets cannot be taxed by this Commonwealth; they are incorporated into the great body of property of other States, and, by reason thereof, are necessarily subject only to their tax laws and other statutes: *St. Louis vs. Wiggins Ferry Co.*, 11 Wall, 423; *Leisy vs. Hardin*, 135 U. S., 100; *Pittsburgh & Coal Co. vs. Bates*, 156 U. S., 577. It is sometimes stated in general terms that the reason for this is that the right to tax is based on the protection accorded (*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, 202; *Tappan vs. Merchants' National Bank*, 86 U. S., 490, 501; *Shaffer vs. Howard*, 250 Fed., 873, cited by these appellants) and hence, as the State of the situs is the only one which can give protection to the tangible property there located, it is argued that no other State can tax it, either directly or indirectly. This contention, founded as it is on general expressions only, is, as usually happens in such cases, plainly fallacious. Even the cases cited do not sustain the conclusion sought to be deduced from them. In *Union Refrigerator Transit Co. vs. Kentucky*, *supra*, which is much relied on by these appellants, the court is careful to say that it is only where "the taxing power is in no position to render these services or otherwise to benefit the person or property taxed" that the tax is objectionable. The other authorities are to the same effect. Surely the State-given right of transmission, by which these appellants seek a present award of \$24,704,126.55, may be said "otherwise to benefit" them.

Moreover, it is said in *Southern Pacific Co. vs. Kentucky*, 222 U. S., 63, 76, that "The legality of a tax is not to be measured by the benefit received by the tax-

payer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden obtainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law." So far as we are aware no well considered opinion, certainly none of the cases cited by these appellants, in any way controverts those principles.

Besides, a multitude of authorities state, and these appellants concede, that this is not a tax on the tangible personalty in New York and Massachusetts, but only on the right of transmission given by the laws of this State, where testator and these distributees alike were and are domiciled. This class of taxes, *Union Refrigerator Transit Co. vs. Kentucky*, *supra* (page 211) says "are controlled by different considerations." It follows that as the right of transmission is State-created, and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of decedent's property wherever located. When this right of transmission, coupled with the terms and conditions mentioned, fastens upon property, or becomes the medium by which its ownership or devolution is asserted, those who claim under the statute must do so *cum onere*, that is, must pay a tax, measured in the way stated; and this it has

been clearly held the Commonwealth has a right to require.

This conclusion is foreshadowed, but not expressly decided, in *Keeney vs. New York*, 222 U. S., 525, 539, where the property was in New Jersey at the time the inheritance tax was collectible and the property received by the distributees. In *Maxwell vs. Bugbee*, 250 U. S. 525, however, the question was squarely raised, and it is said at page 539: "It is next contended that the effect of including the property beyond the jurisdiction of the state in measuring the tax amounts to a deprivation of property without due process of law because it in effect taxes property beyond the jurisdiction of the state. It is not to be disputed that, consistently with the Federal Constitution, a state may not tax property beyond its territorial jurisdiction, but the subject matter here regulated is a privilege to succeed to property which is within the jurisdiction of the state. When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed. This principle has been frequently declared by decisions of this court."

There are, moreover, other insurmountable obstacles in the path of these appellants. If it was necessary to obtain the express or implied consent of New York and Massachusetts, before this Commonwealth would be allowed to include, in the total valuation of the estate, the value of this foreign-located tangible personalty (which, of course, it is not), it would not be difficult to show that both were given; the former by the statutes of those States, hereinafter quoted, and the latter in the undisturbed comity existing between the States.

It is said in *Bullen vs. Wisconsin*, 240 U. S., 525: "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, in a practical sense at least, the law of the domicil is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicil, whatever the limitations of power over the specific chattels may be." To some degree, of course, the rule of comity may be modified by the laws of the State where such personalty is located (see cases cited in *New Orleans vs. Stempel*, 175 U. S., 309, 313); but there is nothing appearing in the legislation of either New York or Massachusetts denying or qualifying the right claimed by this Commonwealth. True, there are provisions in their laws which differ from ours; notably those exempting charities from even this species of taxation, and limiting the proportion of the estate which a testator may give to charity. These relate, however, only to wills of testators there domiciled; the applicable statutory provisions regarding estates of non-resident decedents (showing also, if this is needed, the express consent of those States to the proceedings here), being as follows:

New York: "The validity and effect of a testamentary disposition of real property, situated within the State, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of



such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death."

Massachusetts: Chapter 199, Section 1. "If administration is taken in this Commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of the state or country of which he was an inhabitant."

Chapter 65, section 5. "Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

We agree, therefore, with counsel for the Commonwealth, that under the circumstances stated "it is mere metaphysics to argue whether the transfer (of the tangible personality under consideration) is effected by virtue of the law of the situs or the law of the domicile; the fact is that tangible personal property passes according to, and in the manner provided by the law of the domicile." We are clear, also, that there is no legal ob-

jection to including the value of the tangible personal property located in New York and Massachusetts; and this conclusion would probably be inevitable also (even if there was no comity existing between those States and ours, and no statutes of theirs on the subject), because of the admitted facts that all of the assets presently being distributed, and now claimed by these appellants, are located in Pennsylvania, and the will of testator, through which their right is derived, requires the tax to be paid out of them. For the reasons stated, no claim to these assets can successfully be made, save upon compliance with our statute requiring the payment of an inheritance tax on the value of all the tangible property there located, as well as on the value of the real and personal property in this State.

The principles stated answer also the contention that the tax cannot be assessed at this time, nor any interest charged, because some disputed and contingent claims have not been paid, and hence, it is not yet known what amount should be deducted for them and for administration expenses in adjusting them. If, however, the Act of 1919, provides that this character of tax shall fall due at a given time after a decedent's death, it must then be paid; and if it fixes a date from which interest shall run, it will begin to run from that date. It is erroneous to assert that interest upon a liability never begins to run until the principal is payable; this is so only when no provision is made on the subject; *Morris vs. Ellwood*, 275 Pa., 319. Many notes, to be paid in the future, carry "interest from date;" and this may always be provided for by contracting parties, and by statute in cases within the State's power to levy and collect. It is only necessary, therefore, to see what the Act of 1919

says as to the time the tax shall become due and payable, and from what date interest shall run, remembering always that the tax is on the estate in its entirety, and not on each devise and bequest, when and as payable, as these appellants erroneously contend.

It must be admitted the Act might have made clearer the answer as to the time when the tax is due, but enough appears to show the legislative intention. Section 14, which relates to the property of resident decedents, provides that "Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same." Section 29 says that "Whenever any tax imposed by this Act upon the transfer of property of a non-resident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same" or may sue to recover it in "any court of this Commonwealth or elsewhere." And section 38, which relates to both resident and non-resident decedents, provides that "If the tax is paid within three months after the death of the decedent, a discount of five per cent will be allowed. If the tax is not paid at the end of one year from the death, interest shall be charged at the rate of twelve per centum per annum on such tax." \* \* \*

The last sentence above, fixes the fact that interest begins to run at the end of the year; and all the provisions quoted, when considered together, may fairly be construed to mean that the tax is due and payable not later than the end of the year, which time had expired

before the award appealed from was made. The court below did not err, therefore, in directing the payment of the tax on the instant distribution, the assets in which, as well as those not included in the present account, but nevertheless included in the tax valuation, belonging alike to these appellants, who are, by this distribution, awarded a large part of the estate. It may be well to add that sections 20 and 40 of the Act provide an adequate remedy for recovering back any excess payment made to appear by reason of later developments in the estate.

By the Act of July 9, 1919, P. L. 794, it is provided as follows: "All estates in any building, ground, books, curios, pictures, statuary, or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." No other statute grants exemption from inheritance taxes. By virtue of the provision quoted, the Commonwealth concedes that the value of the land given to the city of Pittsburgh for a public park should be deducted from the "clear value of the estate," in determining the amount upon which the tax should be assessed, but claims that the \$2,000,000 bequeathed for the purpose of keeping the park in order, should not be deducted. The court below erroneously decided otherwise, stating as its reasons that the legacy was given "for the purpose of completing the gift of the land, to effectuate the purpose of the testator," and was no "more than will be

reasonably required to maintain and embellish said land for park purposes."

It will be noticed, however, that the statute nowhere refers to money gifts, but expressly states what subjects shall be exempted from the payment of the tax. It does not say "all estates \* \* \* given for the sole use of the public," but that "all estates in any building, ground, books, curios, pictures, statuary or other works of art," given for such use, shall be exempted, and by no process of reasoning can a money gift be held to come within any of these classes. It follows, therefore, that the \$2,000,000 should not have been deducted in fixing the amount upon which the tax is levied; not only because provisions exempting property from taxation must be strictly construed (*Bank of Commerce vs. Tennessee*, 104 U. S., 493; *Comm. vs. Northern Electric L. & P. Co.*, 143 Pa., 105, 109), but also because the expression of the particular things which shall be exempted, excludes all other subjects: *expressio unius est exclusio alterius*.

Among other personalty owned by testator, located in his dwelling house in New York City, were a Louis XV. Tulip Rosewood Library Table, which was appraised at \$5,500, and a 16th Century French Walnut Cabinet, appraised at \$35,000. The Commonwealth claims that they are "antique \* \* \* furniture," within the meaning of those words in the foregoing quotation from testator's will, and hence were included in the gift to the trustees for the benefit of The Frick Collection, and upon their appraised value a tax of five per cent. should be assessed, although that corporation refused to receive them because they were given by the will to the widow, who, under the decree below, pays a

tax at the rate of two per cent. only. The court below overruled this claim because of an agreement of all the parties interested, including the Commonwealth, that these and the other articles of furniture in testator's New York home were "nothing more than the ordinary furniture and furnishings suitable for such residence." Since that which is "nothing more than ordinary furniture" and "antique \* \* \* furniture" are not or may not be the same, and there is no evidence compelling the conclusion that they are not, we cannot convict the court of error in holding they are not "antique \* \* \* furniture" within the meaning of the will. Moreover, the refusal of "The Frick Collection" to receive them as "antique \* \* \* furniture" necessarily resulted, if they were such, in their falling into the residue, upon which the tax imposed on their value would have been at the rate of two per cent., exactly as it was charged in the decree appealed from.

There is one other matter, not referred to in the assignments of error, but to which our attention is specifically called by a stipulation between the Commonwealth and the parties interested under the will. It appears that testator had purchased what are known as the Fragonard Panels, which were appraised at the value of \$750,000, and the Boucher Panels, which were appraised at the sum of \$150,000; and had "reconstructed the rooms, in which his art collection was to be exhibited, so as to contain said panels, and they were placed therein and are now there, being applied to the walls of the rooms." Whether or not the result of this was to make them a part of the realty, under the laws of New York, we do not know, except as we may infer the negative, since apparently their value was included in

fixing the amount upon which the tax was assessed, and no assignment of error objects to this. Because of the doubt on the subject, however, and of testator's very generous disposition of his property, for the benefit of the public generally, the order we enter will be without prejudice to the rights of the parties in interest to make application to the court below for a reopening of the decree, and a determination of this question, notwithstanding our general conclusion as to the proper inclusion of the value of the personal property directed to be conveyed to "The Frick Collection."

The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals [without prejudice, however, to the rights of the parties in interest to apply for a reopening of the decree, so far as it includes the value of the Fragonard Panels and the Boucher Panels, in determining the amount of the tax]; the costs on all the appeals to be paid by the estate.

Frazer, J. files a dissenting opinion.

Subsequently, on June 23, 1923, on motion of appellants, the Supreme Court modified the judgment in these cases, by eliminating the portion enclosed in brackets, making it read as follows:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the City of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."



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**Dissenting Opinion in the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
Western District.

IN RE  
ESTATE OF HENRY C. FRICK,  
deceased.  
APPEAL OF  
COMMONWEALTH OF PENN-  
SYLVANIA, *et al.*

Nos. 39, 40, 42, 43, 44  
and 45, October Term,  
1923.

Appeal from the O. C. of  
Allegheny County.  
Filed April 30, 1923.

**DISSENTING OPINION.**

FRAZER, J.:

A question is raised in this proceeding as to the right of the state to tax that part of decedent's property paid to the United States government in the form of an estate tax. There can be no doubt as to the meaning of the Act of 1919. The legislature plainly intended, by Section 2, to prevent the deduction of such tax before assessing the state transfer tax. The statute was passed to overcome the decisions of this court in *Otto's Estate*, 257 Pa., 155 and *Knight's Estate*, 261 Pa., 537, wherein we held that, in computing the net value of the estate, taxes due the federal governments and foreign states should be deducted. The Act of 1919, on the point here involved, was construed by this Court in *Kirkpatrick's Estate*, 275 Pa., 271. The writer dissented from the conclusion reached in that case by the majority of the Court, but filed no opinion setting out

his reasons for such dissent. In view of the presentation of the same question in this proceeding, and of the further fact that this case will probably be taken before the Supreme Court of the United States, it seems proper that reasons for such dissent be briefly stated.

The power of the United States to tax is limited only by the extent of the necessity for raising money to meet the various needs of government. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." *McCullough vs. Maryland*, 17 U. S., 315, 429. The opinion in which this language was used firmly established the principle that a state is without power to tax an instrumentality of the Federal Government—a principle which has been constantly followed and applied in the century elapsed since the decision there rendered. The general rule is, therefore, that states are without authority, by taxation or otherwise, to in any manner control or interfere with the operations of the Federal Government, or the instrumentalities by which that government is carried on. The latter is supreme within its sphere of action, and, where there is inconsistency or conflict, the state laws and regulations must yield for the benefit of the whole. If the State of Pennsylvania is permitted to tax property appropriated by the Federal Government under its taxing power this, in effect, permits the state to collect revenue from property set aside for the use of the United

States. If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States. The federal tax is an estate tax payable out of the estate of decedent and is imposed, regardless of the will of the decedent, on the gross estate, after deducting designated items: *Knight's Estate, supra*. The right of the United States to first collect its tax seems to be conceded and if the right of the United States to tax includes the right to tax to any amount, or to take the whole where necessary, the result of holding that the federal tax should not be deducted before computing the state tax might be to impose a combined state and federal tax exceeding the value of the property. Let us suppose, for example, that the federal tax is sixty per cent. of the estate and the state tax an equal amount. The result would be that the estate would owe in taxes twenty per cent. more than its value, regardless of what that might be. While it may be argued that this situation would not be likely to arise, and indeed presents a very remote possibility, yet it shows the logical result of permitting two or more sovereign powers to levy a tax on the whole of a decedent's estate. The fact that the right of succession is a state right and not within the control of the federal government does not give to the state the power to take away from the federal government the subject matter of the tax, as was suggested in the opinion of the majority of this

court in *Kirkpatrick's Estate*, *supra*, inasmuch as, under the federal law, the tax is on the estate as a whole and not on the transfer to the beneficiary and the justification for the tax is the ending of the estate by death rather than the beginning of a new estate by succession: *Knowlton vs. Moore*, 178 U. S., 41.

The majority opinion holds exempt the land given to the City of Pittsburgh as a public park but imposes a tax of 5 per cent. on the fund of \$2,000,00 given for the purpose of taking care of the property. It is conceded the sum so given is not in excess of the amount necessary to properly improve and maintain the park and that, in absence of such gift, the city would be obliged to tax its citizens to provide for such maintenance. It is true the Act of 1919 refers in its exemptions only to "estates in any buildings, ground, books, curios, pictures, statuary or other works of art" given for public purposes and does not specifically mention funds left for maintenance of such objects. Any distinction between the gift of land for a park and the gift of a sum of money for its maintenance or for the purchase of property to be used as a park, is but an arbitrary one and not based on a real difference in the purposes or object of the gift. Granting the power of the legislature to make an arbitrary distinction if it sees fit to do so, the question is whether this has been done in the Act of 1919.

If the statute in question is to be construed strictly, then the majority opinion of the court is undoubtedly right. The argument for such strict construction, however, is based on prior decisions rendered in cases involving, not the question of exemption of public property, but exemption of private property held for charit-

able or other purposes, bringing it within the laws providing for exemption from taxation. There is a clear distinction in the law applicable to these two classes of cases. Public property is never subject to tax laws and no portion of it can be without express statutory enactment. Accordingly, no exemption is needed for public property held as such: *Poor Directors vs. School Directors*, 42 Pa., 21; *Pittsburgh vs. Sterrett Sub-District School*, 204 Pa., 635, 641. Exemption is the rule and taxation the exception. In considering legislation of the character here in question, it is always to be presumed that general language is used with reference to taxable subjects, and the property of municipalities does not fall within the ordinary designation of taxable subjects: *County of Erie vs. City of Erie*, 113 Pa., 360. To levy a tax on such property would merely mean the assessment of new taxes to meet the liability which the city had imposed upon itself and no benefit would accrue. On the contrary, an additional liability would result, measured by the expenses of imposing and collecting the tax. For this reason, it is not reasonable to conclude that a law, however general, was intended to reach property held by the public for public purposes. While such property may be taxed if the legislature sees fit to provide, the intention must be clearly expressed or necessarily implied. On the other hand, as to private property, even though held for private charities and therefore exempt as such, a different rule applies. In such case liability to taxation is the rule and the person claiming exemption must point to an express statute granting relief from the burden. An illustration of this

is found in *Robb vs. Philadelphia*, 25 Pa. Superior Ct., 343, which followed the general principles established many years ago by this court. In the course of the opinion in the case just cited, it was said (Page 346): "There is this distinction for the purpose of taxation between property owned by a church and that owned by a municipality and devoted exclusively to public purposes. The church must show ground on which its property is exempt. The public property of a municipality cannot be taxed unless there is the clearly manifest legislative intention that it shall be subject to the imposition. Property belonging to the state and its municipalities, and which is held for governmental purposes, is presumed to be exempt, and is not included in any designation of property to be taxed however sweeping, unless the statute authorizing the tax expressly provides." Citing *Pittsburgh vs. Sterrett Sub-District School*, *supra*, wherein appears an elaborate review of the authorities of our own and sister states.

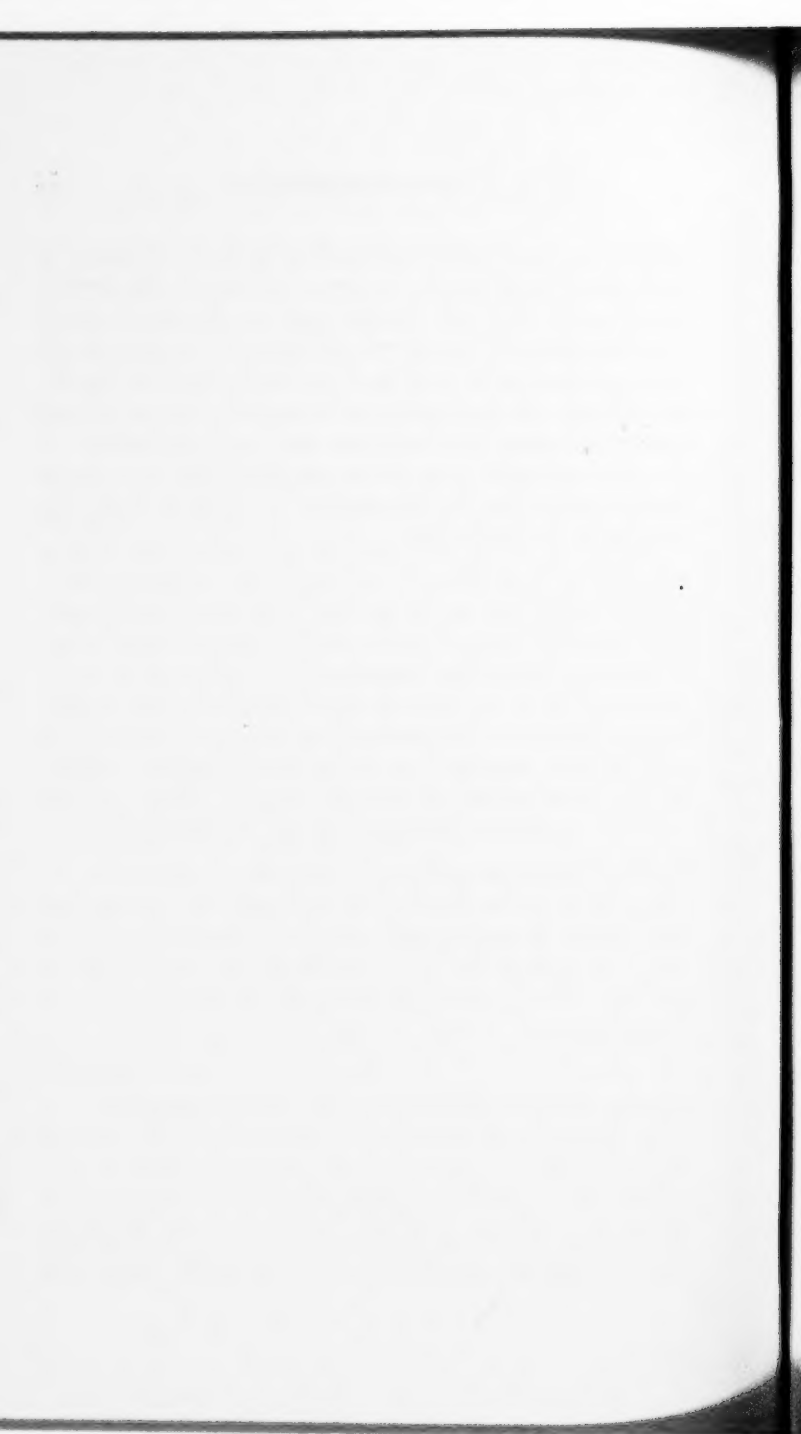
It is also to be noted, as having an important bearing on this question, that the settled policy of the state is to exempt from taxation "institutions of purely public charities," and that they "may be exempt by necessary implication of law;" *Mattern vs. Canevin*, 213 Pa., 588, 589-90, construing Art. IX, Sec. 1, Constitution of Pennsylvania.

Applying the foregoing principles to the present case, it seems a narrow construction of the act in question to exempt existing physical things devised for public purposes, such as buildings, ground, books, curios, works of art, etc., and to refuse to exempt a monetary gift made either for the purpose of purchasing such



objects or maintaining those already in existence. The purpose and spirit of the law applies to the money equally with the objects enumerated. Bearing in mind the principles above stated, showing the policy of our law, it seems to the writer of this opinion that the Act of 1919 should be construed to include money left by will to maintain the charitable objects there exempt.

Entertaining these views on the questions briefly stated above, the writer enters his dissent from the opinion of the majority.



**BRIEF IN SUPPORT OF PETITION.**

Mr. Frick was born in the State of Pennsylvania, and Pittsburgh was his domicile. His estate at the time of his death amounted approximately to one hundred million dollars. By his will he left about three-fourths of his entire estate to charity—to hospitals, to universities, to the creation and endowment of a great park in Pittsburgh, and to the incorporation of a wonderful art institute in New York City, which should be forever free to all people, and to which he gave his New York residence, appraised at over \$3,000,000, his art collection, inventoried at over \$13,000,000, and an endowment fund of \$15,000,000.

In Mr. Frick's will he provided that all inheritance taxes should be paid out of his residuary estate. He bequeathed 87 per cent. of the residuary estate to hospitals and colleges and 13 per cent. to his daughter.

When Mr. Frick died he owned property, real and personal—some tangible, some intangible—in eighteen states and in the Dominion of Canada.

At once the United States and these nineteen other sovereignties stretched out their hands for money, and all sought to exact as taxes the last penny possible from the money which Mr. Frick had left to these charities. The estate has settled (sometimes by compromise, sometimes by litigation) with all these sovereignties except the United States and State of Pennsylvania. The executors paid the United States \$6,338,898.68, which they admitted to be due to it, and to the State

of Pennsylvania \$1,978,949.71, which they admitted was due it. The United States claims a further sum approximating \$3,000,000, which is still under discussion with the Department of Internal Revenue. A part of this is directly involved in this case and awaits its decision, since one of the vagaries of the United States inheritance tax law, as it is administered, is that, in cases where the taxes are thrown upon residuary estates which are bequeathed to charity, the more tax you pay to the several states the more tax you have to pay also to the United States. The State of Pennsylvania claims additional estate tax to the amount of \$1,185,158.14, with interest from December 2, 1920. The Pennsylvania court of last resort has decided that this amount is due. To review this decision a writ of error has been sued out; and it is to review this decision also (in case a writ of error is not the proper remedy) that a *certiorari* is now prayed for.

The petitioner believes that this additional tax should not be paid, because the Pennsylvania Transfer Inheritance Tax Act as construed by the court violates the Constitution of the United States.

The broad question involved is one of jurisdiction or power. The petitioner contends (1) that Pennsylvania cannot levy a transfer inheritance tax on tangible articles of personal property which are located in other states; (2) that in ascertaining the taxable value of the estate which is subject to inheritance taxes in the state of Mr. Frick's domicile, the "paramount" taxes which have to be paid to the United States and other states must be deducted—in this case the United States estate tax and the estate or succession

taxes levied by states other than Pennsylvania on the transfer of shares of capital stock of corporations of other states than Pennsylvania; (3) that in this case, where all inheritance taxes are cast by the terms of the will on the residuary estate, before the tax is calculated a deduction from the estimated value of the estate must be made of the inheritance taxes paid to other states on real estate located in said states and of the inheritance tax paid to the State of Pennsylvania on the general and specific legacies and devises.

After the opinion in this case was handed down by the Supreme Court of Pennsylvania, deciding these questions against your petitioner, an application was made to that Court for the allowance of a writ of error. The petition was accompanied by a petition for a modification of the decree and, as required by the rules of the Pennsylvania Supreme Court, by a petition for a re-argument of the case. On the 23rd day of June, 1923, the Court entered an order amending its prior decree, and made an order dismissing the petition for a re-hearing and also made an order allowing a writ of error from the Supreme Court of the United States. Subsequently the writ of error was formally allowed by the Chief Justice of the Supreme Court of Pennsylvania, a supersedeas bond approved by him, and the writ of error was sued out and filed, together with a certified copy of the record, etc., in this Court at this number and term.

In the judgment of petitioner's counsel, this case falls within the class of cases reviewable by a writ of error.

The provision of the Pennsylvania statute imposing a tax on foreign tangibles is this:

"A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situate within this Commonwealth or elsewhere." (Act approved June 20, 1919, Article I, Section 1, P. L. 521, West Publishing Company's Compilation of Pennsylvania Statutes, Section 20465).

The provision of the Pennsylvania inheritance transfer tax act which relates to the tax upon the paramount taxes, is:

"In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." (Act, approved June 20, 1919, Article I, Section 2, P. L., p. 522; West Publishing Company's Compilation of Pennsylvania Statutes, Section 20466.)

The petitioner's contention in the case is that this statute violates her rights under the constitution and laws of the United States.

It is submitted that under the decisions of this Court this case is reviewable by a writ of error, which was properly granted. *Dahnke-Walker Milling Co. vs. Bondurant*, 257 U. S., 282; *Eureka Pipe Line Co. vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277.

The facts are entirely different from the facts in *Dana vs. Dana*, 250 U. S., 220, a case for which this court held *certiorari* to be the correct remedy. In the *Dana* case the writ of error was dismissed because neither the validity of the statute nor the validity of any authority exercised under the state was drawn in question. The court below, the Supreme Judicial Court of Massachusetts, had decided the case on the view which it took of the question whether the property sought to be taxed was real estate or personal property. This court, therefore, held that the Federal question could be raised only on *certiorari*.

Inasmuch, however, as the opinion of counsel may be erroneous on the question of which remedy is the proper one in this case, a petition for a *certiorari* also has been filed.

This brief is filed for the purpose of showing the court that there are Federal questions of public and general importance involved in the case which have never been decided by this court and on which there are conflicting decisions by State Courts.



## **POINT I.**

### **The Legislature of Pennsylvania Has No Power to Tax the Transfer of Tangible Chattels Situate Beyond Its Boundaries.**

The State of Pennsylvania has, by act of Assembly, undertaken to tax all property of a resident decedent, real and personal, wherever situated :

A transfer inheritance tax amounting to more than \$600,000 has been levied on tangible chattels which belonged to Mr. Frick at the time of his death, and were then located in New York and Massachusetts.

These tangibles consisted of (a) the art collection, valued at more than \$13,000,000 and located in Mr. Frick's house on Fifth avenue in New York City; (b) furniture, household supplies, etc., located in said house; (c) pictures, furniture and furnishings—live-stock, agricultural implements, etc., located at his estate and summer home at Pride's Crossing, Massachusetts.

So far as the Massachusetts tangibles are concerned upon which the State of Pennsylvania has levied a transfer inheritance tax based on a valuation of \$318,429.25, it has been stipulated that they "consisted of nothing more than the ordinary furniture and furnishings suitable for such residences and estates."

The art collection had an inventoried value of \$13,132,391, and upon this the State of Pennsylvania levied a 5 per cent. tax. This art collection, owned by Mr. Frick at the time of his death, consisted of a great many art treasures, mostly antiques of European and Asiatic origin, and of paintings, rugs, furniture, bronzes, porcelains, etc. Some of the articles, such as panel pictures, were of so unusual a character as to require special rooms to be constructed to hold them. The panel pictures were applied to the walls.

The art collection was at the time of Mr. Frick's death located in the City of New York in the building occupied by him at that time as one of his residences. The building was completed and first occupied by Mr. Frick in 1914, and in 1915 Mr. Frick made his will, in which he made provision for carrying out his intent that the building and its contents should become a permanent public gallery of art to which the public should "forever have access." Subject to the right of Mrs. Frick to occupy the land and building as one of her residences so long as she desired to do so, the land was devised to a corporation to be incorporated by the State of New York, and to be known as "The Frick Collection." Mr. Frick by his will bequeathed all the works of art constituting the collection to this corporation. He provided in his will and made it a condition of the bequest that these chattels should be forever held, maintained and preserved in this house. He bequeathed to the corporation \$15,000,000 also as an endowment fund.

There is no room for fictions or theories as to what the *situs* of these chattels was and is. Every one of

the articles which constitute this collection has a real physical existence and necessarily has a *situs* as surely as the building has. Indeed by the terms of Mr. Frick's will the articles never can be removed to any other *situs*.

In considering a question of this kind, one must bear in mind that where tangible chattels are located in a sovereignty other than that of the decedent's domicile, they must be administered by an ancillary administrator or executor of the country of their *situs*, and that not only have the local creditors the right to be first paid before anything is transmitted to the state of the domicile, but resident specific legatees, and in some instances even general legatees residing in the country where the chattels are, have the right to have their legacies paid before the balance is remitted to the principal administrator.

*Harvey vs. Richards*, 1 Mason, 381.

In this case Mr. Justice Story says that unquestionably the specific legatee is entitled to claim in the jurisdiction where the chattel is, although there be only an ancillary administrator there. So it is perfectly clear in this case that the courts of New York will see to it that this legacy to the Frick Collection is kept in the State of New York. It is the duty of the corporation, the Frick Collection, also, to see that these chattels remain in New York and are distributed to it. And the State of Pennsylvania has no way by which it could get this collection into the State of Pennsylvania and administer it there.

The law of England is the same.

*In re Lorillard, Griffiths vs. Catforth* (1922),  
2 Ch., 638.

The testator, who was domiciled in New York, left assets in England, where there was an ancillary administration. The legatees under the will resided in England, and upon claim being made by the principal administrator in New York that the assets after payment of the British debts should be remitted to him, the application was denied by the English Court of Chancery, which held that the resident beneficiaries under the will had the right to have the balance in the hands of the ancillary administrator distributed to them. Lord Justice Warrington says:

"The persons entitled to the unadministered residue are in this country, and the Court will not order these moneys to be sent to an administrator abroad."

The proposition contended for by petitioner is that the State of Pennsylvania cannot impose an inheritance tax upon the transfer of Mr. Frick's tangible personal property, tangible chattels which were situated outside the State of Pennsylvania, and which, consequently, are not situated in the State of Pennsylvania. The obligation imposed upon a state by the Fourteenth Amendment to the Constitution of the United States requires that the subject-matter of the state's action shall be within the jurisdiction of the state, that is, within its territory. This proposition is so thoroughly established that a justification of the tax imposed by

the State of Pennsylvania in the instant case must be founded either (a) upon the fiction expressed by the words "*mobilia sequuntur personam*"; or (b) upon the proposition that the title to decedent's tangible property outside of the state passes by virtue of the laws of the state of the domicile, and that, therefore, both the state of the domicile and the state of the *situs* can tax; or (c) that because there is money being distributed by the Pennsylvania courts to beneficiaries who must come into Pennsylvania to get their share in the distribution, the State of Pennsylvania can impose a tax upon the property in Pennsylvania and determine the amount of the gross value of the estate by adding to it the property outside the state, which it cannot tax.

(a) In view of the decisions of this court and of the Supreme Court of Pennsylvania, it could not be successfully contended that the fiction of *mobilia sequuntur personam* authorizes the tax, because, under the decisions of the court the fiction must yield to the facts. (*Eidman vs. Martinez*, 184 U. S., 578—see opinion of Mr. Justice Brown, pages 581-582; *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194—see opinion by Mr. Justice Brown, page 206; *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S., 395—see opinion by Mr. Justice Moody, page 402.)

The Supreme Court of Pennsylvania did not attempt to sustain this contention.

(b) The second proposition, that the power of the state to tax could be sustained because the succession to articles of personal property passes under the laws of the state of the domicile, is, we submit, unsound.

While the Supreme Court of Pennsylvania discusses this point, it does not base its decision upon it.

*Tangible* personal property is subject to the dominion of the sovereignty where it is situated. The question who is to be recognized as its owner during the life of the owner is a question solely for the sovereignty where the property is located. To whom the title passes when its owner dies is determined by the law of that sovereignty alone, and does not depend in any degree whatsoever upon the law of any other sovereignty. The question in this case is the validity of Mr. Frick's will in New York and Massachusetts. Is his will valid under the laws of those states? There must be a compliance with the laws of those states before the will will pass title to tangible property in those states. This is true, even though the laws of those states say that the will of a non-resident *executed* in the manner required by the state of his domicile is valid in New York and Massachusetts.

In *Keeney vs. New York*, 222 U. S., 525, Mr. Justice Lamar says (page 537) :

"The real estate and tangible property in Texas were not within the taxing jurisdiction of the State of New York and there was no effort to tax the transfer of that property."

While this statement of Mr. Justice Lamar's is only an expression of his opinion and was not necessary to the decision of the case, it is an expression of opinion in the only case, we believe, that ever reached this court, where there had been any question as to the power of

the state of the domicile to levy an inheritance tax upon tangible chattels located in another state.

The Pennsylvania Supreme Court, in its discussion of this point in its opinion, seems to imply that *Bullen vs. Wisconsin*, 240 U. S., 625, is an authority for the proposition that the State of Pennsylvania could impose this tax upon these tangible chattels. In *Bullen vs. Wisconsin*, however, the property consisted entirely of *intangible* property; and when Mr. Justice Holmes in his opinion speaks of the law of the domicile as being needed to establish the inheritance, he is speaking of *intangible* articles of personal property, and is referring to the cases of "contracts and stock" as illustrative of the point.

There are two decisions of state courts of last resort in which it was expressly held that inheritance taxes can not be imposed by the state of the domicile of the decedent upon tangible chattels situate in another state.

In *Weaver's Estate*, 110 Iowa, 328, it was held that an inheritance tax could not be imposed by the State of Iowa upon a herd of cattle which was in Missouri.

In *State vs. Brevard*, 62 North Carolina, 141, the testator was domiciled in North Carolina but owned property, consisting of realty and personalty, in the State of Alabama. Among his property in Alabama was the Vesuvius Furnace with all its appurtenances, which doubtless included some personal tangibles, but which the report of the case expressly shows



included a number of negro slaves. It was held that this tangible property could not be taxed for inheritance tax purposes in North Carolina, the state of the domicile. The opinion is based upon the reasoning in the very exhaustive opinion of the court in the earlier case of *Alvany vs. Powell*, 55 North Carolina, 51.

The same principle is laid down in *Josylin's Estate*, 76 Vermont, 88. In that case the court held that the State of Vermont could not levy an inheritance tax upon an indebtedness due to a resident decedent from a non-resident, because the real *situs* of the thing was the state of the debtor, and the debt could only be collected by means of the laws of that state. Judge Stafford says (page 92) :

“\* \* \* this portion of the estate did not pass by force of our law at all, for that law had no force in the domicile of the debtors. It passed by force and virtue of the law of those jurisdictions. If they recognize our law as the rule to be followed in distributing the personal estate, just as they would have recognized the law of the place where a contract was made as the law of the contract, that did not make it that the property passed by force of the law of this state, but only that it passed in the same manner as it would have passed by our law.”

And again at the bottom of page 93 :

“The hand that passes the estate from one generation to another retains a portion as a sort of toll for the service. Which sovereignty is that? Clearly the one which has the right to say who shall succeed.”

The only case cited by the State of Pennsylvania, where a court of last resort has decided that a state may levy an inheritance tax upon tangible articles outside its boundary is *Matter of Estate of Swift*, 137 N. Y., 77 (1893). This is a very curious case; for the only opinion filed is an opinion written by Mr. Justice Gray to sustain the proposition that the tax was invalid. But he says at the end of his opinion that his brethren do not agree with him, and that therefore the decision of the court below is affirmed. So this case is very little authority. All that we know about the case is that the judges of the Court of Appeals of the State of New York decided that the tax was valid, but gave no reason whatever for their decision, while the only opinion filed does demonstrate quite conclusively that such articles are not taxable.

While it was claimed by the respondent's counsel in their brief before the Supreme Court of Pennsylvania that there were two other cases (*Carpenter vs. Pennsylvania*, 17 Howard, 456, and *Hartman's Estate*, 70 N. J. Eq., 664), in which state inheritance taxes upon tangible chattels located outside of the state had been sustained by the courts, an examination of the cases themselves shows that they do not support the contention of the respondent.

In the report of the case of *Carpenter vs. Pennsylvania*, 17 Howard, 456, the only reference to what the personal property was is a statement of Mr. Justice Campbell, made in delivering the opinion of this court, on page 461, which is as follows:

"In that settlement the executor represented

that a portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth \* \* \*."

There surely is nothing here to show that any of the property involved was *tangible* personal property. The case was an appeal from the Pennsylvania Supreme Court in *Short's Estate*, 16 Pa. St. Reports, 63. The statement of facts in the report of that case on page 63 states explicitly that decedent "owned a large amount invested in stock and corporations in other states, some bonds of the State of Kentucky, etc., in all exceeding half a million of dollars, and above \$1000 of cash in a bank in New York." This certainly disclose no *tangible* chattels located outside of the state. The case is therefore not authoritative for the point on which it is cited; particularly in view of the fact that there is not even any discussion in the opinion of either the Supreme Court of Pennsylvania or the Supreme Court of the United States with reference to the point involved in the instant case.

In *Hartman's Estate*, 70 N. J. Eq., 664, the only point discussed or involved in the decision was whether Mrs. Hartman was a citizen of New York or New Jersey. It was held that she was a citizen of New Jersey, and that therefore New Jersey could tax on the theory of that being her domicile. There is nothing in the report of the case to indicate that there was any tangible personal property belonging to her located in New York, except that, as she is said to have owned a residence in New York in which she lived, one might perhaps infer that there was furniture in the house, and also infer

that the furniture was assessed for inheritance tax purposes. Likewise there is some reference to her having taken her horses and carriages to Long Branch in the State of New Jersey in the summer, but there is nothing to show whether she kept them in New York City or elsewhere in the winter. It is perfectly clear that there is nothing in the case to show that New Jersey did tax these New York tangibles; and it is also clear that no question was raised by counsel or considered by the court as to whether such tangibles, if they were assessed, were or were not taxable. The sole question, as we have stated above, discussed and decided by the New Jersey Court was whether her domicile was in New Jersey or in New York.

It is a general fundamental proposition, frequently laid down by this court, that the power to tax is correlative with the power to protect; that where a thing is situate outside the territory of the state, the sovereign has no power to protect and cannot tax it.

See *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, particularly Mr. Justice Brown's opinion, beginning at page 202.

*Tappan vs. Merchants National Bank*, 86 U. S., 490, particularly Mr. Chief Justice Waite's opinion at page 501.

These chattels located in the State of New York were entirely outside of the State of Pennsylvania and beyond its power to protect. How they should be dis-

posed of, as well as how they should be protected, was entirely within the jurisdiction of New York.

(c) The decision of the Supreme Court of Pennsylvania is founded upon the third proposition, which is:

That because the property which is being distributed in this proceeding is all in this state, there can be no Federal question involved. The proposition is thus stated by Mr. Justice Simpson (page 36, this book):

"It follows that as the right of transmission is State-created and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive, property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of the decedent's property wherever located."

Under this rule the State of Pennsylvania can levy upon the property which is within her jurisdiction a transfer tax which shall be based upon the value of decedent's property wherever situate, and that, of course, means upon real estate as well as upon tangible personal property. There is no more reason for excluding the one than the other.

This reasoning has all the charm of novelty. The Supreme Court of Pennsylvania relies for support of this conclusion on two decisions of this court. The first one is *Keeney vs. New York*, 222 U. S., 525, in which

Mr. Justice Simpson says the conclusion "is foreshadowed but not expressly decided." We are at a loss to see how it was foreshadowed by the opinion in the *Keeney case*, which we have quoted above, in which Mr. Justice Lamar says distinctly that *tangible* articles located outside the state of the domicile cannot be taxed.

The other case relied on is *Maxwell vs. Bugbee*, 250 U. S., 525, in which Mr. Justice Simpson says the question was fairly raised, and quotes from the opinion of this court as follows:

"When the state levies taxes within its authority ~~the~~ property <sup>not</sup> in itself taxable by the state may be used as a measure of the tax imposed."

It is apparent that the Supreme Court of Pennsylvania misapprehended the case this court had before it and the meaning of the language used. In *Maxwell vs. Bugbee* the questions raised was as to the inheritance tax upon *the estate of a non-resident*. The tax was levied with respect only to the local real and tangible personal property in the State of New Jersey, and with respect to stock of New Jersey corporations and national banks located in the State of New Jersey. The provision of the state tax law which was in question is the provision requiring the tax levied to bear the same ratio to the entire tax that would be imposed under the act if the decedent were a resident and all his property were located within the state as his property within the state bears to the entire estate wherever situate, specific devises or bequests of prop-

erty within the state being excluded from the computation.

The complaint of plaintiff in that case was that the act inflicted an unequal tax, which bore more heavily on the estates of non-residents than on the estates of residents. When one reads Justice Simpson's excerpt in connection with what follows it in Justice Day's opinion and in connection with Justice Day's references to authorities, it becomes clear that the excerpt does not support the proposition for which it is cited by the Supreme Court of Pennsylvania. Thus Justice Day says (page 539) :

"In the present case the State imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so within limitations which do not really make the tax one upon property beyond its jurisdiction, the decisions to which we have referred clearly establish."

The instant case involves no such question. It involves the proposition that the state of the domicile may add to that which is within its jurisdiction the value of that which is beyond its jurisdiction and then tax the whole. The Pennsylvania act does "really make the tax one upon property beyond its jurisdiction."

Again, this point involves the question of the meaning of the New York and Massachusetts statutes.

Undoubtedly the States of New York and Massachusetts have the power to decide what laws shall be



good to pass title to tangible chattels in those states and upon whom the title shall devolve; and we contend that they have done so.

For example, Section 17 of the *Decedents' Estate Law of the State of New York* (Book 13, *McKinney's New York Laws*, page 48), page 246 a, says that no person having a wife, child, husband or parent shall by his last will bequeath to charities more than one-half part of his estate, and that the bequests to charities shall be valid to the extent of one-half and no more. Mr. Frick left more than one-half of his estate to charities. Is his will good in New York in the face of this statutory provision?

The Supreme Court of Pennsylvania says that these provisions "relate, however, only to wills of testators there (in New York) domiciled." (See opinion, this book, page 38). The Court of Appeals of the State of New York has decided exactly the contrary, to wit, that it applies to property situate in New York of which a citizen of another state died seized. It has decided that if the bequest to charities made by the will of a citizen of New Jersey exceeds more than one-half of the net value of his entire estate, real or personal, wherever located, the charitable bequest as to all the property located in New York is void and the property goes to the heirs (*Decker vs. Vreeland*, 220 N. Y., 326). It is the law of New York that is going to decide who owns this Frick Collection; and if the question comes up, it will decide that Mr. Frick's will was valid in spite of this provision because his widow and children saw fit to ratify the bequest after his

death; and this is so because that is the law of the State of New York (*Amherst College vs. Ritch*, 151 N. Y., 282).

So too, there are many other statutes, both of New York and of Massachusetts, introduced into the record in this case which show that the validity and effect of Mr. Frick's will is to be determined by the laws of those states.

## **POINT II.**

### **The State of Pennsylvania Has No Power to Levy a Transfer Inheritance Tax Based on a Valuation of the Estate Which Fails to Deduct the Paramount Taxes—The Paramount Liens Imposed by the United States and by the States Where the Property is Located.**

Everyone must admit that the taxing power of the United States Government is supreme; therefore, all that was left of Mr. Frick's estate, the transfer of which the State of Pennsylvania could tax was the remainder after the Federal tax was paid.

Equally so, as Mr. Frick owned stock in the Atchison, Topeka & Santa Fe Railroad, a corporation of the State of Kansas, and the Pennsylvania executors could not get possession of, or exercise any dominion over, the shares until they had paid the Kansas inheritance transfer tax amounting to \$353,887.04, the State of Pennsylvania had no power to tax the estate on a valuation of this Atchison stock at its stock exchange quotation the day Mr. Frick died, disregarding the paramount lien of the State of Kansas. The same thing applies to all the "foreign" stocks.

Mr. Justice Frazer of the Supreme Court of Pennsylvania, in his dissenting opinion in this case, points out the reason why the State of Pennsylvania can-

not impose an estate tax upon the whole estate without deducting the Federal tax: because to do so does, in truth and fact, compel the residuary legatee to pay a tax upon the paramount tax which they have already paid to the Federal Government.

Justice Frazer says (this book page 48):

"If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States."

Mr. Justice Sweeney, in his dissenting opinion in *Hazard vs. Bliss*, 113 Atlantic, 469 (Rhode Island Supreme Court, May 4, 1921), expresses the same idea as follows:

"By operation of Federal law the net estate left by the decedent has been depleted by the amount of the tax and the deceased was deprived of the right to transfer so much of his net estate as would be required to pay the Federal Estate tax. The decedent had the right to dispose of only so much of his net estate as would be left after the deduction and payment of the Federal tax and the residuary legatee had the right to receive from the decedent only so much of his estate as would be left after the deduction and payment of the Federal Estate tax."

It is not necessary at this time to call the attention of this court to the long line of cases, beginning with *McCulloch vs. State of Maryland*, 17 U. S., 315, but we desire to mention *Flaherty vs. Hanson*, 215 U. S., 515, in which it was held that the requirement of a North Dakota statute, that the holder of a United States liquor license must record it in a certain manner in the State of North Dakota and pay a recording fee of \$25, was an invalid interference with the taxing power of the United States.

It seems to us that there is no escape from the proposition that when a state undertakes to levy an inheritance tax upon the full value of a decedent's property without deducting the paramount United States tax it assumes an increase in the amount of the estate which would pass from the decedent to his heirs equal to the amount of the Federal tax, and, consequently levies a tax upon the Federal tax.

Just so with reference to the paramount taxes which are imposed by other states and are liens upon stock of corporations of those states. We turn, for an example, to the Atchison stock held by Mr. Frick. The State of Kansas had upon that stock a paramount lien amounting to \$353,000, which attached at once upon Mr. Frick's death. It was just as much a lien upon the stock as if the stock had been pledged with a Kansas bank as collateral for a loan. The value of the stock to Mr. Frick's estate in Pennsylvania on the day he died could not be more than its market value on that day less the \$353,000 of paramount Kansas taxes. And when the State of Pennsylvania undertakes to disre-

gard the Kansas tax it really imposes an inheritance tax upon the Kansas tax.

The California court of last resort has reached a conclusion in direct antagonism to the Pennsylvania Supreme Court in the instant case: *Re Estate of Henry Miller*, 195 Pacific, 413 (1921). Mr. Justice Olney says at page 417:

"The authority of the state having actual control of the subject-matter, either because it is personal property within its limits, or because, as in this case, it is the stock of one of its corporations, is, of necessity, the superior. The state of the decedent's domicile can deal with the property only after the requirements of the state of its actual *situs* are satisfied. Putting it in another way and concretely, the stock of Henry Miller in the Nevada corporation comes into his California estate, there to be administered upon and taxed, only after the requirements of Nevada are complied with, and the only thing over which California secures authority is what remains after Nevada has taken its tax."

**POINT III.**

**As in This Case, Under Mr. Frick's Will All Inheritance Taxes Are Thrown Upon the Residuary Estate, and as, Regardless of the Will, All Federal Estate Taxes Are by the Law Cast Upon the Residuary Estate, and as the Supreme Court of Pennsylvania Has Decided That This Is an Estate Tax and the Same Result Would Be Reached by the Pennsylvania Statute, It Is Contended that the Taxation of the Estate Passing to the Residuary Legatees, Without Deducting the Inheritance Taxes Paid Other States on Real Estate Located in Other States and the Transfer Taxes Paid the State of Pennsylvania on the General and Specific Legacies and Devises, Is Unconstitutional.**

The question is, Can Pennsylvania not only tax the estate transferred, but also tax the taxes?

In the instant case, where the burden of all taxes is thrown upon the residuary legatees and directed to be paid out of the residuary estate, the Pennsylvania executors paid the inheritance taxes due other states on all the foreign real estate. The question is, Can the State of Pennsylvania make the residuary legatees pay a tax on the estate without a deduction of the



taxes paid on the foreign real estate? Using as an argument an illustration: Let us assume that a resident of Pennsylvania dies possessed only of foreign real estate. The heirs pay the tax in the foreign state upon the transfer of the real estate and go into possession. Under what power and by what process can the State of Pennsylvania collect a tax imposed upon the taxes paid to the foreign state? It is only from such estates as have other assets in Pennsylvania that the State of Pennsylvania may ever hope to collect such a tax. Does this give to estates that have assets in Pennsylvania the equal protection of the laws? Does not this statute essentially lack uniformity in that it collects from estates of residents a tax upon foreign assets where the estates have assets in Pennsylvania, and yet collects no tax from the estates of residents which consist entirely of foreign assets?

Under the same conditions the executors have paid the Pennsylvania inheritance taxes upon the portion of the estate devised to the general and specific legatees. But in arriving at the amount of the tax which must be paid under the terms of the will and the Pennsylvania statute by the residuary legatees, the taxing authorities have imposed a tax upon a fictitious residuary estate which is not in the hands of the executors for distribution by failing to deduct from the calculated residuary estate the taxes paid on the specific and general legacies and devises.

The Pennsylvania Act is somewhat peculiar. While the Supreme Court of Pennsylvania has said that the tax is an estate tax imposed upon the amount of the

whole estate, still under the terms of the act it is perfectly clear that executors have the right to deduct from the legacy of each legatee only the tax on the portion of the estate which he receives; whereas, in this case, by failing to deduct from their calculated unreal residuary estate the tax imposed upon the specific and general legacies, the taxing authorities have imposed upon the residuary legacies a tax upon the other taxes. To put it another way. You have here an act which in terms imposes upon the property received by the legatees a tax at specified rates based upon their relationship or lack of relationship to the decedent, whether such beneficiaries be general, specific or residuary legatees. The effect, however, of this adjudication is that the residuary legatees in this case are required to pay a tax on what they actually receive at a higher rate than residuary legatees in other estates pay; and this, not because of the provision in Mr. Frick's will requiring his executors to pay all the taxes out of the funds of the estate, which has the effect of imposing such taxes upon the residuary legatees, but because of the action of the taxing authorities in arbitrarily adding the amount of those taxes to the amount of money which the residuary legatees actually receive.

*It is respectfully submitted that if the writ of error already granted is not the proper remedy in this case, the Federal questions involved are of such great and general importance, and there is such conflict and confusion between the decisions of state courts of last resort upon these points, that a writ of certiorari should be granted by your Honorable Court to the*

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end that there shall be an authoritative decision of the extent of the taxing power of the states and a proper adjudication of petitioner's rights under the United States Constitution and laws.

GEORGE WHARTON PEPPER,

GEORGE B. GORDON,

*Attorneys for Petitioner.*

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# Supreme Court of the United States

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NO. 443 OCTOBER TERM, 1923.

HELEN C. FRICK, Petitioner,

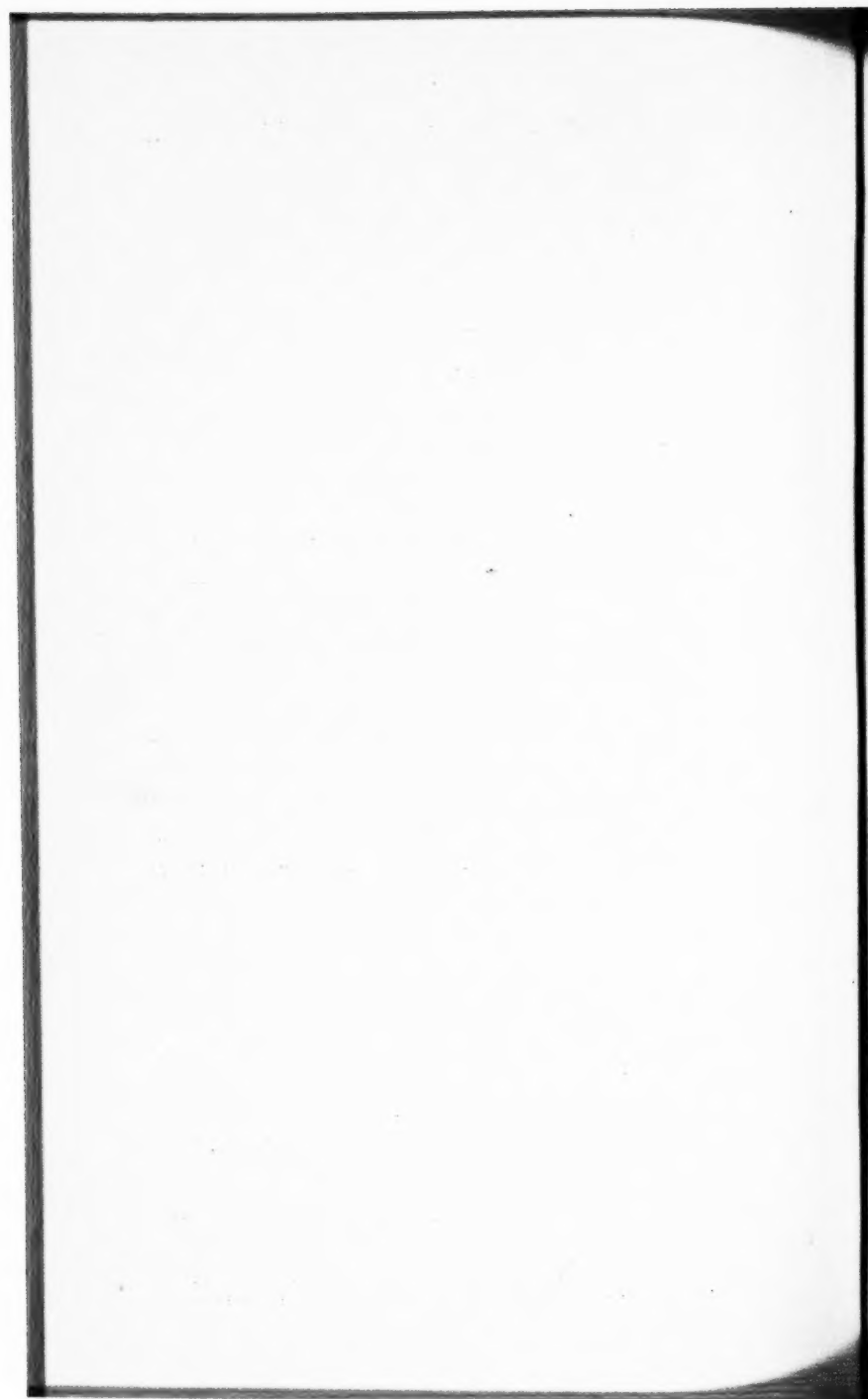
vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

**PETITION FOR WRIT OF CERTIORARI  
TO REVIEW DECISION OF SUPREME  
COURT OF PENNSYLVANIA AND  
BRIEF IN SUPPORT THEREOF.**

A Writ of Error has been allowed in this case by the Chief Justice of the Supreme Court of Pennsylvania and docketed at this number and term. This petition for certiorari is filed in the case to meet the possible contingency that the questions involved cannot be heard on writ of error.

✓  
✓ GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
Attorneys for Petitioner.



**Notice of Application for Writ of  
Certiorari.**

Notice is hereby given that the above named petitioner will, on Monday, October 1st, 1923, at the opening of the Court, or as soon thereafter as counsel can be heard, present her verified petition, which has been filed in the office of the Clerk of the Court, and a copy of which is hereto annexed, together with copy of the entire record in this cause, to the Supreme Court of the United States, at the Court rooms in the Capitol in the City of Washington, D. C., and will, at such time and place, move the Court to issue its writ of certiorari to the Supreme Court of the State of Pennsylvania to review the decision of said Court rendered in the above named cause.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,

*Attorneys for Petitioner.*

Dated September 17, 1923.

To:

COMMONWEALTH OF PENNSYLVANIA,  
HON. GEORGE W. WOODRUFF,  
Attorney General.

HON. DAVID A. REED,  
Attorneys for the Commonwealth of  
Pennsylvania.



THEORY OF APPLIED MECHANICS  
PART I

The first part of the book is devoted to the study of the principles of mechanics. It begins with a chapter on the laws of motion, which are the foundation of the whole science. The author then proceeds to the study of the equilibrium of bodies, and finally to the study of the motion of bodies. The second part of the book is devoted to the study of the principles of statics. It begins with a chapter on the laws of the equilibrium of bodies, which are the foundation of the whole science. The author then proceeds to the study of the equilibrium of systems of bodies, and finally to the study of the equilibrium of machines. The third part of the book is devoted to the study of the principles of dynamics. It begins with a chapter on the laws of the motion of bodies, which are the foundation of the whole science. The author then proceeds to the study of the motion of systems of bodies, and finally to the study of the motion of machines.

The book is written in a clear and concise style, and is suitable for students of engineering and science. It contains many examples and exercises, which will help the student to understand the principles of mechanics. The book is divided into three parts, each of which is devoted to a different branch of mechanics. The first part is devoted to the study of the principles of mechanics, the second part to the study of the principles of statics, and the third part to the study of the principles of dynamics. The book is written in a clear and concise style, and is suitable for students of engineering and science. It contains many examples and exercises, which will help the student to understand the principles of mechanics.

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# Supreme Court of the United States

NO. 443 OCTOBER TERM, 1923.

HELEN C. FRICK, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## **Petition for Writ of Certiorari to Review a Decision of the Supreme Court of Pennsylvania.**

*To the Honorable The Supreme Court of the United  
States:*

The petition of Helen C. Frick respectfully shows:

1. In the matter of the estate of Henry C. Frick originally in the Orphans' Court of Allegheny County, Pennsylvania, an adjudication was made as to the transfer inheritance (estate) taxes due the State of Pennsylvania from the estate of Henry Clay Frick, who was a citizen of Pennsylvania and domiciled there at the time of his death. Your petitioner is a daughter of Mr. Frick, has her domicile in Pittsburgh, Pennsylvania, and is one of the executors of and a residu-

ary legatee under his will. The executors of Mr. Frick's will paid voluntarily to the Commonwealth of Pennsylvania the sum of \$1,978,949.71, which they claimed was the amount payable as a transfer inheritance tax to the State. The Commonwealth of Pennsylvania claimed that it was entitled to the additional sum of \$1,188,248.16. About one-half of this additional amount was arrived at by adding to the taxable value of the estate, as returned by the executors, the value of tangible articles of personal property (that is, Mr. Frick's art collection and household furniture), which were located at the time of his death in his residences in the States of New York and Massachusetts and upon which inheritance taxes had been paid to the States of New York and Massachusetts, respectively, to the extent that they were taxable under the estate tax laws of those states. Your petitioner claimed that it was beyond the power of the State of Pennsylvania to levy any inheritance tax upon those articles and that said tax constituted a violation of the Fourteenth Amendment. The remainder of the increased amount of tax was caused by the disallowance by the Orphans' Court of Allegheny County (in ascertaining the taxable value of the residuary estate) of certain deductions claimed by the executors, which consisted of estate and inheritance taxes paid to the United States and some eighteen of the states constituting the United States and to the Province of Quebec (upon real estate located in those states and shares of stock of corporations incorporated under the laws of those states). Your petitioner claimed that the failure to allow these deductions in ascertaining the taxable value of the residuary estate

was a violation of the Constitution and laws of the United States.

Petitioner prosecuted an appeal to the Supreme Court of Pennsylvania and said court decided the questions adversely to petitioner's contention. There are seven justices of the Supreme Court of Pennsylvania, of whom five participated in the argument and the decision. One justice was ill and one was disqualified for the reason that he had been Attorney General of the State and counsel for the Commonwealth at the time this controversy originated. The opinion of the court was rendered by Justice Simpson and concurred in by Chief Justice Von Moschzisker and Justices Walling and Kephart. Justice Frazer filed a dissenting opinion. Your petitioner made an application to the Supreme Court of Pennsylvania for the allowance of a writ of error from this court. The Supreme Court of Pennsylvania held that this was a proper case for the allowance of a writ of error and the writ was allowed by Robert Von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania. The writ of error was duly sued out and has been filed in this court and docketed at this number and term. While petitioner has been advised by her counsel that in their opinion this is a case which can properly be brought to this court by a writ of error, she has also been informed that there is possibly some doubt as to whether the correct remedy is not by *certiorari*; and therefore your petitioner seeks to have this court review the decision hereinbefore referred to on *certiorari* in case it should be held that the case is not properly here upon a writ of error.

2. The first question involved in this litigation is whether the State of Pennsylvania did not exceed its power and jurisdiction when it passed this statute which as applicable to this case provides that there shall be included in the taxable value of the estate tangible articles of personal property located at the time of Mr. Frick's death in his two residences in New York City, New York, and Pride's Crossing, Massachusetts, and whether, in collecting an inheritance tax upon the value of those articles, it did not violate the due process clause of the Constitution of the United States.

3. Petitioner's next contention is that, when the Commonwealth of Pennsylvania, in ascertaining the tax which must be borne by the residuary legatees, refused to allow as a deduction from the taxable value of the estate the estate tax levied by the United States Government which had been paid to the amount of \$6,338,898.68, it violated clause 1 of section 8 of Article 1 of the Constitution of the United States in that it interfered with the power of Congress to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States and also clause 2 of Article VI of the Constitution of the United States in that it denied that the said Constitution and the laws of the United States made in pursuance, to wit, among others, sections 400 to 410, inclusive, of an Act of Congress of the United States, entitled "An act to provide revenue and for other purposes," approved February 24, 1919 (40 Stat., pp. 1096-1101) and section 3467 of the United States Revised Statutes, are the supreme law of the



land and that the judges in every state are bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding, and also clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprived your petitioner of property without due process of law and also denied to her the equal protection of the law.

4. Petitioner's next contention is that so much of the judgment of the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania as directs the payment of the tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid to other states on the transfer of real estate in other states will deprive petitioner of her property without due process of law in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

5. Petitioner's next contention is that so much of the tax authorized and directed to be paid by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania as includes a tax on the estimated value of the estate, without a deduction of inheritance taxes paid other states on the transfers of shares of stocks of corporations incorporated under the laws of those states, will deprive your petitioner of her property without due process of law and will deprive her of

the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

6. Your petitioner's next contention is that, in so far as the decree of the Orphans' Court of Allegheny County and of the Supreme Court of Pennsylvania distributes to the Commonwealth of Pennsylvania a sum of money which includes a tax on the estimated value of the estate without a deduction of the Pennsylvania inheritance tax from the estimated value of the gross estate the effect of such action is to increase the taxable value of the residuary estate, and your petitioner, as one of the residuary legatees is deprived of her property and the said tax is invalid on the ground of its being repugnant to section 1 of the Fourteenth Article of amendment to the Constitution of the United States in that it deprives your petitioner of property without due process of law and also denies to her the equal protection of the laws.

7. The facts upon which this controversy arises are as follows: Mr. Henry Clay Frick died in the City of New York on the 2nd day of December, 1919. He left a last will and testament dated the 24th day of June, 1915, probated on December 6, 1919, in the office of the Register of Wills of Allegheny County and of record in Will Book Volume 160, page 6. This will is in writing. It was subscribed at the end by Mr. Frick in the City of Pittsburgh, Pennsylvania. It was attested by the written signatures of three citizens of Pittsburgh and was in Pittsburgh at the time of his death. Mr. Frick was born in the State of Pennsylvania and he was continuously domiciled in said State from his birth until his death.

Mr. Frick, at the time of his death, had three houses. One, known as Clayton, is located in the City of Pittsburgh, Pennsylvania. It was acquired by him soon after his marriage and given (conveyed) by him shortly thereafter to his wife. This was his legal domicile, so denominated by him when he registered every year as a voter in the voting precinct and ward of the City of Pittsburgh in which the house is situated. Another of his residences was a house at Pride's Crossing in the State of Massachusetts. By his will he devised to his wife a life estate in this property and the remainder to his daughter, your petitioner. He bequeathed to his wife all the tangible personal property (furniture, pictures, etc.) located in and about this residence. The taxing authorities of the State of Pennsylvania did not attempt to include the value of this real estate in Mr. Frick's taxable property, but they included the value of the tangible personal property located there at a valuation of \$325,534.25 and levied a transfer inheritance estate tax thereon. This levy has been sustained by the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania, the court of last resort.

Mr. Frick also owned another residence on Fifth Avenue in the City of New York, the land and buildings being of the value of upwards of \$3,000,000. This residence he devised to a charitable corporation of the State of New York known as "The Frick Collection," but he gave his wife the right or license to use it "so long as she should occupy the same as one of her residences." The State of Pennsylvania has not attempted

to tax this real estate, although the Act, the constitutionality of which petitioner is here attacking, directs such a levy to be made. Contained in this residence was Mr. Frick's collection of paintings, antique furniture and other objects of art. These he bequeathed to said corporation of the State of New York known as "The Frick Collection," with the mandatory provision that the collection should always be retained and maintained in said residence for the use and benefit of all persons whomsoever. This residence also contained certain other furniture, household supplies, etc., which were not a part of the Frick Collection. These Mr. Frick bequeathed to his wife. The State of Pennsylvania valued the articles of personal property comprising "The Frick Collection" at \$13,132,391, and valued the rest of the tangible personal property (furniture, etc.) that was in this residence and garage adjacent thereto at \$77,818.75. The Commonwealth included these valuations in its estimate of the taxable value of the estate and levied a tax thereon. Your petitioner contends that these articles of tangible personal property were beyond the dominion of the State of Pennsylvania, and that the Pennsylvania Act, in so far as it authorized and directed a tax to be levied on them, is a violation of the Constitution of the United States, has the effect of reducing the residuary estate by upwards of \$600,000, and deprives petitioner, as one of the residuary legatees, entitled to thirteen per cent,—the rest went to charity—of her property.

The balance of the tax in controversy in this case, amounting to upwards of \$500,000, was caused by the

refusal of the State of Pennsylvania (in accordance with the mandate of the statute as it was construed by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania) to deduct from the total taxable value of the estate before levying the tax four items: (a) estate taxes paid to the United States which were a paramount lien upon the whole estate; (b) transfer inheritance estate taxes paid to other states upon real estate located in those other states; (c) transfer inheritance taxes paid to other states and to the Dominion of Canada upon shares of capital stock of corporations organized under the laws of those states and the Dominion of Canada, which were a paramount lien upon those shares and where the shares could not be reduced to possession by the executors or over which no act of dominion could be exercised by them until such foreign taxes were paid, and (d) the inheritance taxes imposed by the State of Pennsylvania upon the general and specific devises, which taxes, so paid, amounted to \$1,925,247.61 (which will be increased if this decision of the Supreme Court of Pennsylvania stands by the additional amount of \$1,200,000).

Some of these taxes by the law and all of them by the terms of Mr. Frick's will are thrown upon the residuary estate.

Your petitioner contends that all of the additional Pennsylvania estate taxes were imposed in violation of her rights under the Constitution of the United States:

8. Therefore:

THE FUNDAMENTAL QUESTIONS INVOLVED  
IN THE CASE ARE

(1) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication made in this case in conformity with it impose a transfer inheritance tax on tangible articles of personal property located at the time of their owner's death in Massachusetts and New York, has not the Commonwealth exceeded its power, and do not the statute and the adjudication violate the Constitution of the United States?

The tangibles in Massachusetts were located at the testator's summer home at Pride's Crossing. They were given by the will to Mrs. Frick and consisted of paintings, furniture, household stores, farm implements, etc. The tangibles in New York were located at the testator's New York house. They were given by the will in part to Mrs. Frick and in part to the Frick Collection, a charitable corporation of the State of New York, which the testator by his will directed to be formed for the purpose of receiving them, and to which he devised the New York house. The tangibles given to the corporation consisted of decedent's paintings, antique furniture and other objects of art which were contained in the New York house and were bequeathed with the provision that they must remain in that build-

ing forever. The tangibles given to Mrs. Frick consisted of the contents of the New York house, other than the art collection, such as household stores, etc., and the contents of the garage, such as automobiles, tools, etc.

(2) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication in this case made in conformity with it imposes a transfer inheritance tax to be paid by the residuary legatees and devisees without a deduction from the gross estate of the amounts paid (a) to the United States as an estate tax; (b) to other states as taxes on real estate; (c) to other states as taxes on the transfer of shares of stock of corporations of those states; and (d) to the Commonwealth of Pennsylvania as inheritance taxes on general and specific legacies, does not said act exceed the power of the Commonwealth of Pennsylvania and violate the Constitution of the United States?

Petitioner contended in the Pennsylvania courts that the Pennsylvania Inheritance Tax Law of 1919, under which this tax was levied, imposes a succession tax which applies only to the bequests received by the various beneficiaries. The Supreme Court of Pennsylvania has decided to the contrary; that is, it has decided that this act imposes an estate tax and not a succession tax. Petitioner concedes that the decision of the Pennsylvania courts upon the meaning of the statute is not reviewable here. The Pennsylvania inheritance tax act, as construed by the Pennsylvania courts, imposed an estate tax upon the whole property, real and personal, of which the decedent died seized, wherever situate, and allowed deductions to be made only for

debts of the decedent and administration expenses. The tax imposed by the act, however, is not uniform, but is classified according to the relationship of the beneficiaries to the deceased. Under this statute, the bequests to Mr. Frick's wife and his lineal descendants were subject to a two per cent. tax. All other devises and bequests were subject to a five per cent. tax. The Pennsylvania act contains no exemption for charities.

In order to assess the tax at the different rates, admittedly a difficult if not impossible thing to accomplish, where the tax is levied upon the decedent's whole estate and not upon the gifts to the beneficiaries, the taxing authorities adopted the following method, which the Supreme Court of Pennsylvania by affirming the decision of the Orphans' Court of Allegheny County has sustained.

This is the way they made their levy. They first took the values of all the real estate in Pennsylvania specifically devised (except the devise to the City of Pittsburgh for a park which was not taxable) and of all the personal property specifically bequeathed, wherever situate, and calculated a tax on them at the rate of either two or five per cent. They then took from the will the amounts of the general legacies and assessed a tax on those at the proper rates. This brought the calculation to a point where they had found the value of the real estate in Pennsylvania and all the other property disposed of by the will, except the residuary estate, to be \$55,783,794. This it will be understood is the sum of the general and specific bequests and devises (excluding real estate outside of Pennsylvania). They then fixed the value of the entire estate,



excluding real estate outside of Pennsylvania, at \$89,675,098.45. From this total valuation they subtracted the sum of the specific devises and bequests and reached a residue of \$33,891,304.45. From this they deducted the estimated administration expenses and debts of the decedent amounting to \$9,187,177.90, leaving an estimated balance of \$24,704,126.55, which the Orphans' Court of Allegheny County has christened "the net residuary estate." The taxing authorities then proceeded to tax thirteen-hundredths of this so-called net residuary estate at two per cent. because it is bequeathed to your petitioner, who is a daughter of the decedent, and eighty-seven-hundredths at five per cent. because under the will it goes to various charities. These two sums they added to the tax on the specific and general devises and legacies, which gives an aggregate amount of \$3,064,107.85. Deducting \$1,978,949.71 previously paid by the executors on account, and adding \$103,090.02 interest, they arrived at a total unpaid tax claim of \$1,188,248.16. This is the amount for which the Orphans' Court of Allegheny County entered judgment. The Supreme Court of Pennsylvania on appeal by the Commonwealth added \$100,000 (and interest thereon) to this amount, being a tax of five per cent. on what is known as the Park Endowment Fund of \$2,000,000, which the court below had found was not taxable.

The actual net residuary estate is not this fictitious amount of \$24,704,126.55 arrived at as shown above. There is no such amount of money in the residuary estate, and the residuary legatees will never get it.

The amount of money actually in the residuary estate is this estimated amount less \$6,338,898.68 paid to the United States as Federal inheritance taxes, less \$1,084,459.42 paid to other states and countries as taxes, less \$1,978,949.71 paid to the Commonwealth of Pennsylvania as inheritance taxes, that is to say, less a total sum of \$9,402,307.81. So the actual residuary estate now in the hands of the executors is only \$15,301,818.74. Moreover, if this decision of the Supreme Court of Pennsylvania stands, the residuary estate will be still further reduced by about \$1,300,000, additional Pennsylvania taxes that will have to be paid; and, if the Commissioner of Internal Revenue is successful in the contention he is making for additional United States estate tax, it will be reduced by the further sum of \$3,100,000. This will bring the real value of the residuary estate down to about \$10,901,818.74. So that the actual net residuary estate, which it may be assumed the residuary legatees will receive, if it is not still further depleted by taxes, is not twenty-five million dollars, but between eleven and fifteen million dollars.

Petitioner avers that she is deprived of her property without due process of law when, under the mandate of the Pennsylvania statute as construed by the court, she is compelled to pay an inheritance tax figured upon a residuary estate, arbitrarily assumed or ordered or decreed to be twenty-five million dollars, but which, in point of fact, is only somewhere between eleven and fifteen million dollars.

9. While your petitioner has been advised by counsel that the writ of error which has been allowed

in this case is her proper remedy under the decisions of this court (see *Eureka Pipe Line Company vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Company vs. Hallanan*, 257 U. S., 277; *Dahnke-Walker Milling Company vs. Bondurant*, 257 U. S., 282), if the court should be of the opinion that the questions involved in this case cannot properly be raised upon a writ of error, then petitioner respectfully submits that a writ of *certiorari* should be granted in this case for the following reasons:

(a) Because the decision of the highest court of the State of Pennsylvania involves federal questions which were clearly raised in every court and at all stages of the proceedings and were definitely decided and passed upon adversely to petitioner's contention by the opinion and decree of the highest court of the state, to wit, the Supreme Court of Pennsylvania;

(b) The federal questions involved are questions of general and great importance and have never been decided by this court;

(c) There is a conflict between the decisions of the courts of last resort of various states as to whether or not the state in which a decedent was domiciled at the time of his death may lawfully levy an estate or succession tax upon tangible articles of personal property situate in some other state. This question, which depends upon the United States Constitution, has never been decided by any federal court.

(d) The intense pressure for money to use for governmental purposes is felt by each of the states of the Union, as well as by the government of the United States. In response to this pressure, several states are

developing a tendency to reach out beyond their limits and subject to taxation, for their own purposes, property which all will admit is subject to taxation by the state of its situs. Such a situation tends to chaos. The present situation is that inheritance taxes are being levied by the federal government, by the state wherein the decedent was domiciled, by the state in which his real estate was located, by the state in which his tangible personal property was located, by the state where the corporation in which he owned stock was domiciled, by the state in which his debtor was domiciled, by the state in which some railroad corporation domiciled in some other state has a line of tracks, and so on indefinitely. There should be an authoritative decision of this court as to whether or not the state of the domicile can levy an estate tax on the furniture in a summer residence which the decedent owned in some other state. That is one of the questions involved in this case. The more important one as to the money involved is, Can Pennsylvania levy an estate tax on Mr. Frick's great art collection which is located in New York and which can never be removed therefrom or brought into Pennsylvania?

(e) There is a conflict between the decisions of the States of Pennsylvania and New York as to the construction of a New York statute.

The Supreme Court of Pennsylvania in this case says that the New York statute which limits the proportion of the estate which the decedent may give to charity (this is a vital question involved in the present controversy bearing upon the point whether the be-

quest known as The Frick Collection passed under Mr. Frick's will or whether it passed under the release or assignment executed by his widow and children after his death) does not apply to property in New York belonging to a Pennsylvania citizen. See Justice Simpson's opinion (page 38 of this book), beginning with the sentence, "These (New York statutes) relate, however, only to wills of testators there domiciled \* \* \*"; whereas, the Court of Appeals of the State of New York has decided that the statute applies to property in the State of New York, of which a decedent, who was a citizen of another state, died seized: *Decker vs. Vreeland*, 220 N. Y., 326.

(f) It is submitted that the controlling reason given by the Supreme Court of Pennsylvania for sustaining the constitutionality of this act, by which the State of Pennsylvania levied this tax on tangible articles of personal property located outside the state (which act requires the levying of an inheritance tax upon all property, real and personal, wherever situate, which belonged to any person domiciled in Pennsylvania), is unsound. The reason advanced by the court is that, because "the property being distributed on this proceeding is all in this state; appellants are our citizens and duly appeared and contested the claim of the Commonwealth, \* \* \*," and as the court has jurisdiction over the person who raises the question (that is your petitioner, one of the residuary legatees, who is a citizen of Pennsylvania), and the decedent, the State having jurisdiction over both—the decedent having been and appellants being now domiciled in the State, and the latter appearing to the action, all the

property now being distributed being within the State and a valid state statute lawfully imposing the tax the United States Constitution has no bearing upon the case. (See Justice Simpson's opinion, this book, pages 30 and 31.)

Your petitioner is entitled to thirteen-hundredths of the residuary estate; the rest of the residuary estate goes to charity. Under the construction placed upon this act by the Pennsylvania Supreme Court to wit, that it is an estate tax, as well as under the provisions of Mr. Frick's will, the burden of the whole of these inheritance taxes is cast upon the residuary legatees. Fifty-three per cent. of the residuary estate goes to Princeton University, Harvard College, Massachusetts Institute of Technology and the Society of the Lying-in Hospital of the City of New York, none of which institutions are domiciled in Pennsylvania. The right of the State of Pennsylvania to impose the tax cannot be any different where the question is raised by petitioner, who is a citizen of Pennsylvania, from what it would be if it had been raised by Princeton University, a citizen of New Jersey. Besides this, the question was also raised by the executors who represent all the residuary legatees, resident and nonresident.

In *Koch's Estate*, 4 Rawle 268, the Supreme Court of Pennsylvania decided that the administrator could prosecute an appeal from a decree of distribution affecting the interests of legatees residing abroad.

(g) In ascertaining the value of the estate for the purpose of imposing a transfer inheritance estate

tax by the State of decedent's domicile, must there not under the Constitution and laws of the United States be deducted (1) the inheritance tax which the executors were compelled to pay foreign states under whose laws corporations in which decedent owned stock were incorporated, before said shares of stock could be reduced to possession by the executors; (2) the estate tax levied by the United States under the Acts of Congress; (3) the inheritance tax paid foreign states upon real estate located in such foreign states; (4) the inheritance *estate* tax levied by the State of Pennsylvania upon the general and specific legacies and devises. All these are questions of general importance and none of them have ever been decided by this court.

Wherefore, your petitioner respectfully prays that, if in the opinion of this Honorable Court a writ of error does not lie in this case, a writ of *certiorari* may issue out of it under the seal of this court, directed to the Supreme Court of Pennsylvania, commanding the said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in said Supreme Court of Pennsylvania in this case, to the end that the case may be reviewed and determined in this court as provided in section 240 of the Act of Congress designated as the Judicial Code, and the said decree of the said Supreme Court of Pennsylvania in this case and every part thereof may be reviewed by this Honorable Court and the decree of the Supreme Court of Pennsylvania may be reversed and the decision and

decree of the Orphans' Court of Allegheny County may also be reversed.

And your petitioner will ever pray.

HELEN C. FRICK,

*Petitioner,*

By

GEORGE WHARTON PEPPER,

GEORGE B. GORDON,

*Her Attorneys.*

State of ..... }  
County of ..... } ss: .

Helen C. Frick, being duly sworn, says that she has read the foregoing petition and knows the contents thereof and that the same is true as she is advised and believes.

.....  
Sworn to and subscribed before me, this ..... day  
of ....., 1923.  
.....



**Opinion of Majority of the Supreme  
Court of Pennsylvania.**

**IN THE SUPREME COURT OF PENNSYLVANIA  
FOR THE WESTERN DISTRICT**

**ESTATE OF HENRY C. FRICK, Deceased.**

Appeals of THE COMMONWEALTH OF PENNSYLVANIA.	}	Nos. 39 and 40 October Term, 1923.
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Appeals of HELEN C. FRICK, a residuary legatee.	}	Nos. 42 and 44. October Term, 1923.
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Appeals of ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. MCELDOWNEY and WILLIAM WATSON SMITH, Ex- ecutors of the last will and testament of HENRY C. FRICK, deceased, and HELEN C. FRICK, a residuary legatee.	}	Nos. 43 and 45. October Term, 1923.
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Six appeals from Decrees of the Orphans' Court of Allegheny County, as of December Term, 1920, No. 476, and of March Term, 1922, No. 171.

**OPINION OF THE COURT.**

**SIMPSON, J.**

We are asked by these six appeals to review the action of the court below in determining the amount of inheritance tax due by the estate of Henry C. Frick, deceased, to this Commonwealth, of which he was a resident, and in which he was domiciled when he died

on December 21st, [2nd] 1919. A number of points are raised; some concern the interpretation of the Constitution of the United States or of this State; others the construction of our Inheritance Tax Act of June 20, 1919, P. L. 521; and still others the meaning of testator's will. The argument took a wide range, possibly because of a belief regarding the importance of the question raised, due partly to the large amounts involved; and perhaps also because of a conviction, in which the writer shares, that the State should have as part of its public policy, a refusal to tax any gift for a "purely public charity," since no valid reason can be given for taxing the public for the benefit of the public. Whatever appellants' reasons may be, however, we are compelled to follow along the lines of the able arguments presented, though this results in what would ordinarily be considered an unnecessarily long opinion.

By testator's will (so far as it need be considered here), he gave to certain trustees "all the books, pictures, paintings, \* \* \* antique or artistic furniture" \* \* \* contained in his dwelling house in New York City, to be held by them until a corporation, to be known as "The Frick Collection," should be formed, under the laws of the State of New York, when these articles should be transferred to it; he gave the rest of his personal property in said dwelling house, and also in his residence at Pride's Crossing, Massachusetts, to his wife "excepting, however, from this bequest, all articles of personal property" given to the trustees and corporation above stated; he gave to the city of Pittsburgh a tract of 151 acres of land "as a public park," and to the Union Trust Company of that City, the sum of \$2,000,000, the income therefrom to be used in "maintaining,

improving, embellishing and adding to the said park, and keeping the same in proper condition;" and he directed "that all inheritance, legacy, succession or similar duties or taxes, which shall become payable in respect to any property or interest passing under my will \* \* \* shall be paid out of the capital of my residuary estate," which, as found by the court below, amounted to \$24,704,126.55.

After the probate of the will, the executors paid to the United States the sum of \$6,338,898.68 being the Federal Estate Tax upon the property left by decedent; to various States and the Province of Quebec, the sum of \$1,084,459.42, being the inheritance taxes chargeable under their laws; to the State of New York the sum of \$131,000; and to this Commonwealth the sum of \$1,978,949.71, the inheritance tax which the estate admitted to be due. The governments specified do not concede the first three of these payments to be sufficient in amount; whether or not the last one is, is the question to be decided in this opinion.

By proper proceedings before the register of wills of Allegheny County, the amount of the tax due this State was found to be largely in excess of the sum already paid, whereupon the executors and one of the residuary legatees appealed to the orphans' court of the county, which determined a smaller amount was due, and later, on an adjudication of the executors' account, awarded to the Commonwealth the additional sum of \$1,188,248.16. It was reached by assessing the proper percentages on the total value of the real estate in Pennsylvania, and of the personalty wherever found (the valuations being agreed upon); the \$5,156,625.00 worth of realty located elsewhere not being considered or included.

From these two decrees the present appeals were taken; two of them by the Commonwealth, alleging additional taxes should have been assessed, and the other four by the executors and a residuary legatee, averring that too much was awarded. No claim was made upon the fund except by the State and the legatees; no creditor asked that distribution be delayed or a fund set apart to await a future adjudication of his claim; and no refunding bonds were required of the distributees, to whom the balance in the account was awarded. Hence, even if there are unpaid creditors, who hereafter present and prove their claims, they cannot, under our statutes, successfully maintain suits against the distributees or the executors, to obtain a refund of the sums paid by the latter to the former, on the faith of the court's decree, but can only have recovery against assets not appearing in the present account: Sections 49 (b) and 50 (a) and (b), Fiduciaries Act of June 7, 1917, P. L. 447, 515, 516-7.

The basic claim of the executors and residuary legatee being that the award is excessive, by reason of the fact that the court below improperly included, in the total valuation of the estate, certain of the assets left by testator, and mistakenly refused to allow certain credits against that valuation, in the natural order of consideration our first inquiry is: What does the Act of June 20, 1919, P. L. 521, under which the proceedings were had, provide regarding the tax and how it is to be calculated? Section 2 thereof provides, *inter alia*, that "In ascertaining the clear value of such (decendent's) estates, the only deductions to be allowed from the gross value of such estates shall be the debts of the decedent and the expenses of the administration of such estates,

and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or territory." And section 10 says: "The register of wills of the county, in which letters testamentary or of administration were granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed." \* \* \*

It is clear from these sections that the tax is to be levied upon "the clear value" of the entire estate (from which has been excluded, however, real estate located outside of Pennsylvania), after deducting only "the debts of the decedent and the expenses of the administration of such estates." The appraisement to be made is not of the legacies or devises but of the whole estate of a decedent; the debts and expenses of administration are not to be deducted from any particular gift or gifts, but from the whole estate, and the taxes paid to the United States or to any other State or territory, if permitted to be deducted, would have been from the whole estate. We therefore conclude that it is the entire value of the estate, less the credits specified, which forms the basis of the tax, and not the amounts received by the particular legatees; hence, as stated in *Knowlton vs. Moore*, 175 U. S., 41, that which the State "taxes is not the interest to which some person (or many) succeeds on a death, but the interest which ceased by reason of the death." Since this is the true construction of the Act, much of the argument made by these appellants, founded as it is upon the conten-

tion that the tax is levied only upon the particular gifts, when and as received, becomes ineffective because it has no relation to the actual status.

Basing their elaborate argument largely on their erroneous construction of the Act as last stated, the executors and residuary legatee who appeal, ask us to ignore the clear and unambiguous language of section 2, above quoted, and to decide that the court below erred "In ascertaining the clear value" of the estate, because it did not deduct from its "gross value" (a) The amount paid the Government for the Federal Estate Tax; (b) The amounts paid other States and the Province of Quebec for their inheritance taxes on decedent's real and personal property there located; and (c) The inheritance tax payable to this State. *Kirkpatrick's Estate*, 275 Pa., 271, is an express authority against the first of these claims; in principle it also decides the others adversely to these appellants. In deference to the able argument made, however, the supposedly new points presented will be briefly considered aside from that decision.

In support of their contention upon these points, they urge that refusal to allow those items to be deducted "adds the Federal tax, the tax paid to the other States," and that paid to this State, to the total valuation to which the tax rate is applied; this is erroneous, however, it simply refuses to allow those sums to be deducted from the "gross value of such estates" "in ascertaining the clear value" thereof, exactly as does the Federal Estate Tax Act (*New York Trust Co. vs. Eisner*, 256 U. S., 345, 349, 350), and many of the inheritance tax laws of other States. No valid reason is given why this may not be done. On the contrary, as stated in the

last cited case, where "the tax attaches to the estate before distribution,—if it is a tax on the right to transmit, or on the transmission at its beginning—obviously it attaches to the whole estate, except so far as the statute sets a limit."

Recognizing that their contention now being considered is in direct antagonism to the express language of the statute, these appellants in effect ask us to ignore this language, and from isolated phrases and words in the statute to reach an opposite conclusion, partially because of general expressions found in our opinions in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271,—though this question was not directly raised in either of them—apparently forgetting the basic rule that "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated": *Cohens vs. Virginia*, 6 Wheaton, 264, 397, per Marshall, C. J., *O'Malley vs. O'Malley*, 272 Pa., 536. Of course we cannot permit isolated expressions in a statute, or in any opinion of ours, to override the express language of the Act being construed.

It is further urged that there are constitutional objections to the provisions of the statute, if the deduc-

tions above referred to are not made. The only section of the Constitution of this State, which is supposed to affect the matter, is article IX, section 1, which provides that "all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." This, however, is not infringed, since the estates of all decedents are subjected to a uniform inheritance tax in all parts of the Commonwealth; and hence we turn to the provisions of the Federal Constitution, alleged to have been violated by the decree below, to see if they or any of them stand in the way of enforcing the statute as written.

The first claim regarding this is that it is "repugnant to clause 1 of section 8 of Article I of the Constitution of the United States, in that it interferes with the power of Congress to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." This is a veiled attack upon our dual form of government, and, in its ultimate analysis, would appear to be an attempt to deny to the States any right to exercise their taxing power upon subjects which the Federal Government may also tax. It needs no argument to show the error of such a contention. Moreover, there cannot be found anywhere within the four corners of the Act, in the practice under it, or in the decree below, the slightest evidence of a desire to interfere with the taxing powers of the United States.

It is further said that if the taxes paid the Government are not deducted our statute will be "repugnant . . . also to clause 2 of Article VI of the Constitution of the United States, in that it denies that the said Constitution and the laws of the United States made in



pursuance thereof \* \* \* are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." In this day probably no one would deny the supremacy claimed; this court never has. The principle contended for is wholly inapplicable, however. Given the fact, that a State may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plumber vs. Coler*, 175 U. S., 115; *Orr vs. Gilman*, 183 U. S., 278), it necessarily follows that, in determining the way in which this tax shall be computed, it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other States. "The right to dispose of one's property by will, and the right to have it disposed of by the law, after decease, is created by statute, and therefore the State may impose such conditions upon the exercise of this right as it may determine" (*Banker's Trust Co. vs. Blodget*, decided by the Supreme Court of the United States January 22, 1923, and not yet officially reported); hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, "The power of taxation, with its accessorial sanctions, is a power of government, and all property is subject to it." If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her.

It is also contended that the refusal to make these deductions, and the inclusion of the value of the tangible personalty, located elsewhere than in Pennsylvania (which will be further considered hereafter), made the decree below "repugnant \* \* \* also to clause 1 of the 14th Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws." This contention is fully answered by what is said in *Keeney vs. New York*, 222 U. S., 525, 535: "The 14th Amendment does not diminish the taxing power of the State, but only requires that, in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the State of the Power to select the subjects of taxation. \* \* \* There can be no arbitrary or unreasonable discrimination;" but this can only arise (*Dane vs. Jackson*, 256 U. S., 589, 599) where the State tax law "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—'to spoliation under the guise of exerting the power of taxation,' " a situation not alleged to exist under our statute. If, however, we pass to separately consider the two branches of the Amendment, these appellants are not helped.

Upon the question of "due process of law," we have not been favored with a single specification regarding either the Act, or the practice under it. The property being distributed on this proceeding is all in this State; appellants are our citizens and duly appeared and con-

tested the claim of the Commonwealth; all the facts are agreed to; the law applicable thereto has been passed upon by the Orphans' court, all of whose judges are learned in the law, is now under review by this court, and, judging from the record, and the suggestion in the brief, will subsequently be scrutinized by the Supreme Court of the United States. Wherein then have these appellants been deprived of "due process of law?" We agree that "A tax can only be imposed by the State when it has either jurisdiction over a person or jurisdiction over his property;" here it has jurisdiction over both, decedent having been and appellants being domiciled in the State, the latter appearing to the action, all the property now being distributed being within the State, and a valid State statute lawfully imposing the tax. Under such circumstances, it is only when the State does not "provide a fair opportunity for submitting the issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts," that the conclusion reached "is void because in conflict with the due process clause." *Ohio Valley Water Company vs. Ben Avon Borough*, 253 U. S., 287, 289.

Nor is there any definite allegation as to how the estate is deprived of the equal protection of the laws, though this is asserted over and over again, not only in regard to the refusal to allow the deduction of the items specified, but also, as above stated, in regard to the inclusion of the value of the tangible personal property located outside of Pennsylvania. If the estate has been deprived of the "equal protection of the laws," since all the facts are agreed to, it should be easy to point out exactly how this is so. What has Pennsylvania done

which operates to "deny to any person within its jurisdiction the equal protection of the laws?" These executors and residuary legatees are accorded exactly the same protection given by this statute to every other person within its jurisdiction. Since then "the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied \* \* \* (because) the law operates 'equally and uniformly upon all persons in similar circumstances': *Billings vs. Illinois*, 188 U. S., 97, 103. It would be of no moment, even if it is the fact, that double taxation may result, so far as regards the tangible personalty located in New York and Massachusetts (*Blackstone vs. Miller*, 188 U. S., 189; *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S., 54), for, if this is the case, every one else in like situation will be doubly taxed.

Two of the contentions made by these appellants are entitled to some further consideration. It is clear that neither testator nor any other decedent can, by his will, alter the amount which the Commonwealth is entitled to receive, save to the extent the statute itself specifies, that is, where the gifts are to a "father, mother husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof \* \* \* or from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow (or) passing from an illegitimate child to his mother" (these being commonly called direct inheritances), but two per centum is to be charged upon the value thereof, and where the gifts are to collaterals,—which include all distributees

except those above specified,—five per centum is to be charged upon the value thereof. It necessarily follows that the direction of the present will “that all inheritances \* \* \* taxes \* \* \* shall be paid out of the capital of my residuary estate,” can have no effect in reducing the amount of tax to be paid to this State, but only operates, as between the two classes of gifts, to fix the ultimate payment upon the residuary devisees and legatees, in relief of the others, each of whom, but for that clause, would suffer an abatement of his or her devise or bequest, to the extent of the tax imposed upon its value. If this was not so, and a testator was permitted to reduce the amount payable to the State, by simply charging upon the residuary estate all the taxes paid elsewhere, the sovereign power of the State to impose them as it pleases, subject only to the requirement of equality and uniformity, would have to be made subject also, in this class of cases, to the unrestrained directions of a testator. Under such circumstances, a decedent who had a relatively large amount of property elsewhere, might, by the device stated, greatly embarrass and perhaps largely or wholly defeat the claim of the domiciliary State, even upon the value of the personalty within her own borders.

The inequity of this contention is particularly apparent as to the tax of other States on the realty located therein, the value of which is not considered in determining the amount of our inheritance tax. We fully agree with the contention of these appellants that it would be “quite preposterous to say that the State of Pennsylvania has any jurisdiction to impose a tax upon the tax which is paid to the foreign state upon the transfer of foreign real estate.” In the absence of a

statutory provision so authorizing, however, it would be at least equally preposterous to say that a legatee can have deducted from the actual value of the property in our State, which he inherits, the amount he or some one else pays some other State, upon the realty there situated, and pay our tax only on the difference and this, and not the imaginary levying of "a tax upon the tax which is paid to the foreign State," is the actual situation.

As to the inheritance tax paid to this State, we may further say that the Act discloses no trace of a purpose to permit the deduction of the tax itself, in order to determine the valuation upon which the tax is to be levied. On the contrary, section 16 expressly provides that before paying any legacy the "executor or administrator, or other trustee \* \* \* shall deduct (the tax) therefrom at the rate of two per centum upon the whole legacy (if the inheritance is direct) \* \* \* and at the rate of five per centum upon the whole legacy," if the inheritance is collateral. Hence it is palpably erroneous to say that the percentage to be levied on the "clear value of such estate," as calculated in the manner provided by the statute, should not be levied thereon, but on a sum which is that "clear value" less the tax itself; that is, in the case of direct inheritance on 98 per cent. of that value, and in the case of collaterals on 95 per cent. of it. Doubtless the legislature could thus provide, but it has not, and, so far as we are aware, no other legislature ever has pursued that course.

The next contention is that the tangible personal property given to the widow, and also that which was to become part of "The Frick Collection," is not subject

to this tax, because situated in other States than Pennsylvania. Every one concedes those assets cannot be taxed by this Commonwealth; they are incorporated into the great body of property of other States, and, by reason thereof, are necessarily subject only to their tax laws and other statutes: *St. Louis vs. Wiggins Ferry Co.*, 11 Wall, 423; *Leisy vs. Hardin*, 135 U. S., 100; *Pittsburgh & Coal Co. vs. Bates*, 156 U. S., 577. It is sometimes stated in general terms that the reason for this is that the right to tax is based on the protection accorded (*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, 202; *Tappan vs. Merchants' National Bank*, 86 U. S., 490, 501; *Shaffer vs. Howard*, 250 Fed., 873, cited by these appellants) and hence, as the State of the situs is the only one which can give protection to the tangible property there located, it is argued that no other State can tax it, either directly or indirectly. This contention, founded as it is on general expressions only, is, as usually happens in such cases, plainly fallacious. Even the cases cited do not sustain the conclusion sought to be deduced from them. In *Union Refrigerator Transit Co. vs. Kentucky*, *supra*, which is much relied on by these appellants, the court is careful to say that it is only where "the taxing power is in no position to render these services or otherwise to benefit the person or property taxed" that the tax is objectionable. The other authorities are to the same effect. Surely the State-given right of transmission, by which these appellants seek a present award of \$24,704,126.55, may be said "otherwise to benefit" them.

Moreover, it is said in *Southern Pacific Co. vs. Kentucky*, 222 U. S., 63, 76, that "The legality of a tax is not to be measured by the benefit received by the tax-

payer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden obtainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law." So far as we are aware no well considered opinion, certainly none of the cases cited by these appellants, in any way controverts those principles.

Besides, a multitude of authorities state, and these appellants concede, that this is not a tax on the tangible personalty in New York and Massachusetts, but only on the right of transmission given by the laws of this State, where testator and these distributees alike were and are domiciled. This class of taxes, *Union Refrigerator Transit Co. vs. Kentucky*, *supra* (page 211) says "are controlled by different considerations." It follows that as the right of transmission is State-created, and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of decedent's property wherever located. When this right of transmission, coupled with the terms and conditions mentioned, fastens upon property, or becomes the medium by which its ownership or devolution is asserted, those who claim under the statute must do so *cum onere*, that is, must pay a tax, measured in the way stated; and this it has



been clearly held the Commonwealth has a right to require.

This conclusion is foreshadowed, but not expressly decided, in *Keeney vs. New York*, 222 U. S., 525, 539, where the property was in New Jersey at the time the inheritance tax was collectible and the property received by the distributees. In *Maxwell vs. Bugbee*, 250 U. S. 525, however, the question was squarely raised, and it is said at page 539: "It is next contended that the effect of including the property beyond the jurisdiction of the state in measuring the tax amounts to a deprivation of property without due process of law because it in effect taxes property beyond the jurisdiction of the state. It is not to be disputed that, consistently with the Federal Constitution, a state may not tax property beyond its territorial jurisdiction, but the subject matter here regulated is a privilege to succeed to property which is within the jurisdiction of the state. When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed. This principle has been frequently declared by decisions of this court."

There are, moreover, other insurmountable obstacles in the path of these appellants. If it was necessary to obtain the express or implied consent of New York and Massachusetts, before this Commonwealth would be allowed to include, in the total valuation of the estate, the value of this foreign-located tangible personalty (which, of course, it is not), it would not be difficult to show that both were given; the former by the statutes of those States, hereinafter quoted, and the latter in the undisturbed comity existing between the States.

It is said in *Bullen vs. Wisconsin*, 240 U. S., 525: "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicile as determining the succession, it may be said that, in a practical sense at least, the law of the domicile is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicile, whatever the limitations of power over the specific chattels may be." To some degree, of course, the rule of comity may be modified by the laws of the State where such personalty is located (see cases cited in *New Orleans vs. Stempel*, 175 U. S., 309, 313); but there is nothing appearing in the legislation of either New York or Massachusetts denying or qualifying the right claimed by this Commonwealth. True, there are provisions in their laws which differ from ours; notably those exempting charities from even this species of taxation, and limiting the proportion of the estate which a testator may give to charity. These relate, however, only to wills of testators there domiciled; the applicable statutory provisions regarding estates of non-resident decedents (showing also, if this is needed, the express consent of those States to the proceedings here), being as follows:

New York: "The validity and effect of a testamentary disposition of real property, situated within the State, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of

such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death."

Massachusetts: Chapter 199, Section 1. "If administration is taken in this Commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of the state or country of which he was an inhabitant."

Chapter 65, section 5. "Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

We agree, therefore, with counsel for the Commonwealth, that under the circumstances stated "it is mere metaphysics to argue whether the transfer (of the tangible personality under consideration) is effected by virtue of the law of the situs or the law of the domicile; the fact is that tangible personal property passes according to, and in the manner provided by the law of the domicile." We are clear, also, that there is no legal ob-

jection to including the value of the tangible personal property located in New York and Massachusetts; and this conclusion would probably be inevitable also (even if there was no comity existing between those States and ours, and no statutes of theirs on the subject), because of the admitted facts that all of the assets presently being distributed, and now claimed by these appellants, are located in Pennsylvania, and the will of testator, through which their right is derived, requires the tax to be paid out of them. For the reasons stated, no claim to these assets can successfully be made, save upon compliance with our statute requiring the payment of an inheritance tax on the value of all the tangible property there located, as well as on the value of the real and personal property in this State.

The principles stated answer also the contention that the tax cannot be assessed at this time, nor any interest charged, because some disputed and contingent claims have not been paid, and hence, it is not yet known what amount should be deducted for them and for administration expenses in adjusting them. If, however, the Act of 1919, provides that this character of tax shall fall due at a given time after a decedent's death, it must then be paid; and if it fixes a date from which interest shall run, it will begin to run from that date. It is erroneous to assert that interest upon a liability never begins to run until the principal is payable; this is so only when no provision is made on the subject; *Morris vs. Ellwood*, 275 Pa., 319. Many notes, to be paid in the future, carry "interest from date;" and this may always be provided for by contracting parties, and by statute in cases within the State's power to levy and collect. It is only necessary, therefore, to see what the Act of 1919

says as to the time the tax shall become due and payable, and from what date interest shall run, remembering always that the tax is on the estate in its entirety, and not on each devise and bequest, when and as payable, as these appellants erroneously contend.

It must be admitted the Act might have made clearer the answer as to the time when the tax is due, but enough appears to show the legislative intention. Section 14, which relates to the property of resident decedents, provides that "Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same." Section 29 says that "Whenever any tax imposed by this Act upon the transfer of property of a non-resident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same" or may sue to recover it in "any court of this Commonwealth or elsewhere." And section 38, which relates to both resident and non-resident decedents, provides that "If the tax is paid within three months after the death of the decedent, a discount of five per cent will be allowed. If the tax is not paid at the end of one year from the death, interest shall be charged at the rate of twelve per centum per annum on such tax." \* \* \*

The last sentence above, fixes the fact that interest begins to run at the end of the year; and all the provisions quoted, when considered together, may fairly be construed to mean that the tax is due and payable not later than the end of the year, which time had expired

before the award appealed from was made. The court below did not err, therefore, in directing the payment of the tax on the instant distribution, the assets in which, as well as those not included in the present account, but nevertheless included in the tax valuation, belonging alike to these appellants, who are, by this distribution, awarded a large part of the estate. It may be well to add that sections 20 and 40 of the Act provide an adequate remedy for recovering back any excess payment made to appear by reason of later developments in the estate.

By the Act of July 9, 1919, P. L. 794, it is provided as follows: "All estates in any building, ground, books, curios, pictures, statuary, or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." No other statute grants exemption from inheritance taxes. By virtue of the provision quoted, the Commonwealth concedes that the value of the land given to the city of Pittsburgh for a public park should be deducted from the "clear value of the estate," in determining the amount upon which the tax should be assessed, but claims that the \$2,000,000 bequeathed for the purpose of keeping the park in order, should not be deducted. The court below erroneously decided otherwise, stating as its reasons that the legacy was given "for the purpose of completing the gift of the land, to effectuate the purpose of the testator," and was no "more than will be

reasonably required to maintain and embellish said land for park purposes."

It will be noticed, however, that the statute nowhere refers to money gifts, but expressly states what subjects shall be exempted from the payment of the tax. It does not say "all estates \* \* \* given for the sole use of the public," but that "all estates in any building, ground, books, curios, pictures, statuary or other works of art," given for such use, shall be exempted, and by no process of reasoning can a money gift be held to come within any of these classes. It follows, therefore, that the \$2,000,000 should not have been deducted in fixing the amount upon which the tax is levied; not only because provisions exempting property from taxation must be strictly construed (*Bank of Commerce vs. Tennessee*, 104 U. S., 493; *Comm. vs. Northern Electric L. & P. Co.*, 143 Pa., 105, 109), but also because the expression of the particular things which shall be exempted, excludes all other subjects: *expressio unius est exclusio alterius*.

Among other personalty owned by testator, located in his dwelling house in New York City, were a Louis XV. Tulip Rosewood Library Table, which was appraised at \$5,500, and a 16th Century French Walnut Cabinet, appraised at \$35,000. The Commonwealth claims that they are "antique \* \* \* furniture," within the meaning of those words in the foregoing quotation from testator's will, and hence were included in the gift to the trustees for the benefit of The Frick Collection, and upon their appraised value a tax of five per cent. should be assessed, although that corporation refused to receive them because they were given by the will to the widow, who, under the decree below, pays a

tax at the rate of two per cent. only. The court below overruled this claim because of an agreement of all the parties interested, including the Commonwealth, that these and the other articles of furniture in testator's New York home were "nothing more than the ordinary furniture and furnishings suitable for such residence." Since that which is "nothing more than ordinary furniture" and "antique \* \* \* furniture" are not or may not be the same, and there is no evidence compelling the conclusion that they are not, we cannot convict the court of error in holding they are not "antique \* \* \* furniture" within the meaning of the will. Moreover, the refusal of "The Frick Collection" to receive them as "antique \* \* \* furniture" necessarily resulted, if they were such, in their falling into the residue, upon which the tax imposed on their value would have been at the rate of two per cent., exactly as it was charged in the decree appealed from.

There is one other matter, not referred to in the assignments of error, but to which our attention is specifically called by a stipulation between the Commonwealth and the parties interested under the will. It appears that testator had purchased what are known as the Fragonard Panels, which were appraised at the value of \$750,000, and the Boucher Panels, which were appraised at the sum of \$150,000; and had "reconstructed the rooms, in which his art collection was to be exhibited, so as to contain said panels, and they were placed therein and are now there, being applied to the walls of the rooms." Whether or not the result of this was to make them a part of the realty, under the laws of New York, we do not know, except as we may infer the negative, since apparently their value was included in



fixing the amount upon which the tax was assessed, and no assignment of error objects to this. Because of the doubt on the subject, however, and of testator's very generous disposition of his property, for the benefit of the public generally, the order we enter will be without prejudice to the rights of the parties in interest to make application to the court below for a reopening of the decree, and a determination of this question, notwithstanding our general conclusion as to the proper inclusion of the value of the personal property directed to be conveyed to "The Frick Collection."

The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals [without prejudice, however, to the rights of the parties in interest to apply for a reopening of the decree, so far as it includes the value of the Fragonard Panels and the Boucher Panels, in determining the amount of the tax]; the costs on all the appeals to be paid by the estate.

Frazer, J. files a dissenting opinion.

Subsequently, on June 23, 1923, on motion of appellants, the Supreme Court modified the judgment in these cases, by eliminating the portion enclosed in brackets, making it read as follows:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the City of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."



**Dissenting Opinion in the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
Western District.

IN RE	} Nos. 39, 40, 42, 43, 44 and 45, October Term, 1923.
ESTATE OF HENRY C. FRICK, deceased.	
APPEAL OF	} Appeal from the O. C. of Allegheny County. Filed April 30, 1923.
COMMONWEALTH OF PENN- SYLVANIA, <i>et al.</i>	

**DISSENTING OPINION.**

FRAZER, J.:

A question is raised in this proceeding as to the right of the state to tax that part of decedent's property paid to the United States government in the form of an estate tax. There can be no doubt as to the meaning of the Act of 1919. The legislature plainly intended, by Section 2, to prevent the deduction of such tax before assessing the state transfer tax. The statute was passed to overcome the decisions of this court in *Otto's Estate*, 257 Pa., 155 and *Knight's Estate*, 261 Pa., 537, wherein we held that, in computing the net value of the estate, taxes due the federal governments and foreign states should be deducted. The Act of 1919, on the point here involved, was construed by this Court in *Kirkpatrick's Estate*, 275 Pa., 271. The writer dissented from the conclusion reached in that case by the majority of the Court, but filed no opinion setting out

his reasons for such dissent. In view of the presentation of the same question in this proceeding, and of the further fact that this case will probably be taken before the Supreme Court of the United States, it seems proper that reasons for such dissent be briefly stated.

The power of the United States to tax is limited only by the extent of the necessity for raising money to meet the various needs of government. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." *McCullough vs. Maryland*, 17 U. S., 315, 429. The opinion in which this language was used firmly established the principle that a state is without power to tax an instrumentality of the Federal Government—a principle which has been constantly followed and applied in the century elapsed since the decision there rendered. The general rule is, therefore, that states are without authority, by taxation or otherwise, to in any manner control or interfere with the operations of the Federal Government, or the instrumentalities by which that government is carried on. The latter is supreme within its sphere of action, and, where there is inconsistency or conflict, the state laws and regulations must yield for the benefit of the whole. If the State of Pennsylvania is permitted to tax property appropriated by the Federal Government under its taxing power this, in effect, permits the state to collect revenue from property set aside for the use of the United

States. If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States. The federal tax is an estate tax payable out of the estate of decedent and is imposed, regardless of the will of the decedent, on the gross estate, after deducting designated items: *Knight's Estate, supra*. The right of the United States to first collect its tax seems to be conceded and if the right of the United States to tax includes the right to tax to any amount, or to take the whole where necessary, the result of holding that the federal tax should not be deducted before computing the state tax might be to impose a combined state and federal tax exceeding the value of the property. Let us suppose, for example, that the federal tax is sixty per cent. of the estate and the state tax an equal amount. The result would be that the estate would owe in taxes twenty per cent. more than its value, regardless of what that might be. While it may be argued that this situation would not be likely to arise, and indeed presents a very remote possibility, yet it shows the logical result of permitting two or more sovereign powers to levy a tax on the whole of a decedent's estate. The fact that the right of succession is a state right and not within the control of the federal government does not give to the state the power to take away from the federal government the subject matter of the tax, as was suggested in the opinion of the majority of this

court in *Kirkpatrick's Estate*, *supra*, inasmuch as, under the federal law, the tax is on the estate as a whole and not on the transfer to the beneficiary and the justification for the tax is the ending of the estate by death rather than the beginning of a new estate by succession: *Knowlton vs. Moore*, 178 U. S., 41.

The majority opinion holds exempt the land given to the City of Pittsburgh as a public park but imposes a tax of 5 per cent. on the fund of \$2,000,00 given for the purpose of taking care of the property. It is conceded the sum so given is not in excess of the amount necessary to properly improve and maintain the park and that, in absence of such gift, the city would be obliged to tax its citizens to provide for such maintenance. It is true the Act of 1919 refers in its exemptions only to "estates in any buildings, ground, books, curios, pictures, statuary or other works of art" given for public purposes and does not specifically mention funds left for maintenance of such objects. Any distinction between the gift of land for a park and the gift of a sum of money for its maintenance or for the purchase of property to be used as a park, is but an arbitrary one and not based on a real difference in the purposes or object of the gift. Granting the power of the legislature to make an arbitrary distinction if it sees fit to do so, the question is whether this has been done in the Act of 1919.

If the statute in question is to be construed strictly, then the majority opinion of the court is undoubtedly right. The argument for such strict construction, however, is based on prior decisions rendered in cases involving, not the question of exemption of public property, but exemption of private property held for charit-

able or other purposes, bringing it within the laws providing for exemption from taxation. There is a clear distinction in the law applicable to these two classes of cases. Public property is never subject to tax laws and no portion of it can be without express statutory enactment. Accordingly, no exemption is needed for public property held as such: *Poor Directors vs. School Directors*, 42 Pa., 21; *Pittsburgh vs. Sterrett Sub-District School*, 204 Pa., 635, 641. Exemption is the rule and taxation the exception. In considering legislation of the character here in question, it is always to be presumed that general language is used with reference to taxable subjects, and the property of municipalities does not fall within the ordinary designation of taxable subjects: *County of Erie vs. City of Erie*, 113 Pa., 360. To levy a tax on such property would merely mean the assessment of new taxes to meet the liability which the city had imposed upon itself and no benefit would accrue. On the contrary, an additional liability would result, measured by the expenses of imposing and collecting the tax. For this reason, it is not reasonable to conclude that a law, however general, was intended to reach property held by the public for public purposes. While such property may be taxed if the legislature sees fit to provide, the intention must be clearly expressed or necessarily implied. On the other hand, as to private property, even though held for private charities and therefore exempt as such, a different rule applies. In such case liability to taxation is the rule and the person claiming exemption must point to an express statute granting relief from the burden. An illustration of this

is found in *Robb vs. Philadelphia*, 25 Pa. Superior Ct., 343, which followed the general principles established many years ago by this court. In the course of the opinion in the case just cited, it was said (Page 346): "There is this distinction for the purpose of taxation between property owned by a church and that owned by a municipality and devoted exclusively to public purposes. The church must show ground on which its property is exempt. The public property of a municipality cannot be taxed unless there is the clearly manifest legislative intention that it shall be subject to the imposition. Property belonging to the state and its municipalities, and which is held for governmental purposes, is presumed to be exempt, and is not included in any designation of property to be taxed however sweeping, unless the statute authorizing the tax expressly provides." Citing *Pittsburgh vs. Sterrett Sub-District School*, *supra*, wherein appears an elaborate review of the authorities of our own and sister states.

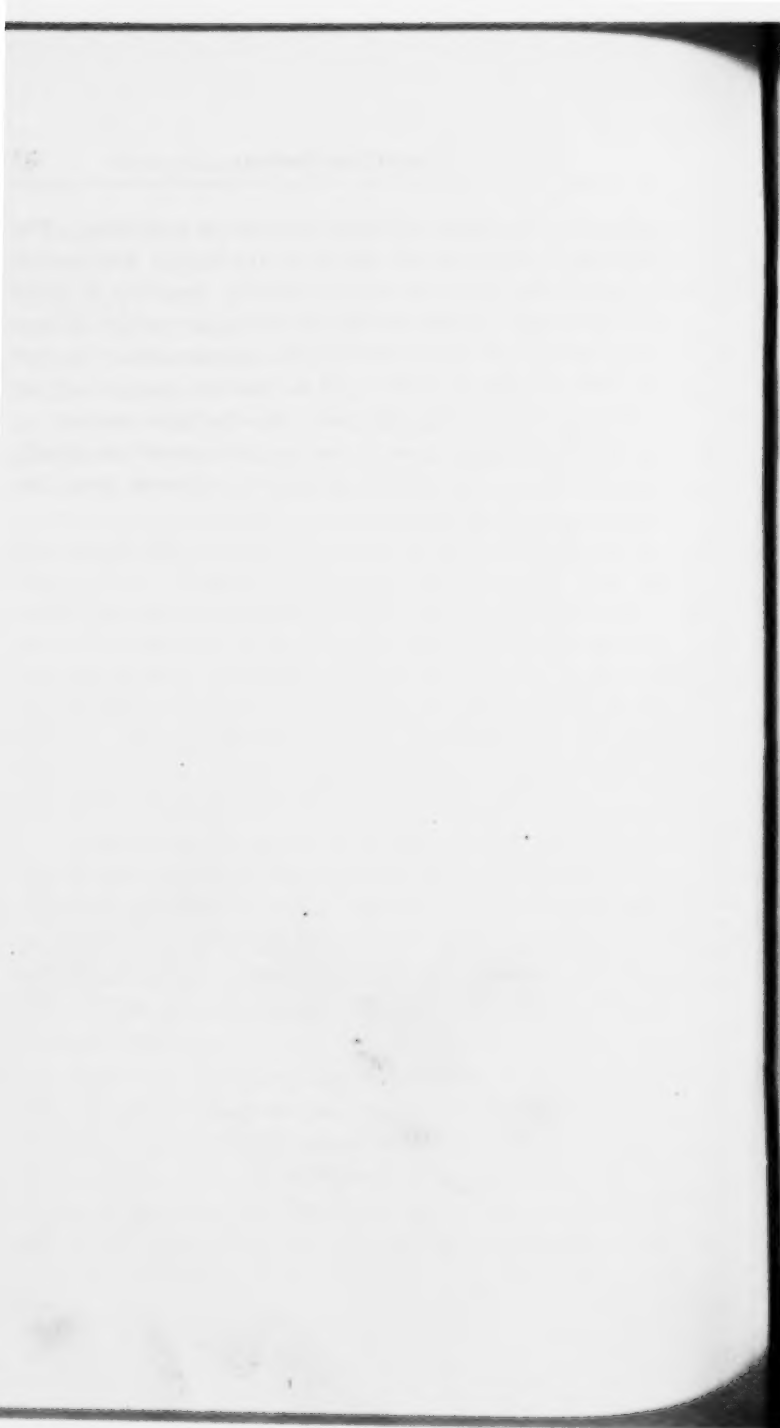
It is also to be noted, as having an important bearing on this question, that the settled policy of the state is to exempt from taxation "institutions of purely public charities," and that they "may be exempt by necessary implication of law;" *Mattern vs. Canevin*, 213 Pa., 588, 589-90, construing Art. IX, Sec. 1, Constitution of Pennsylvania.

Applying the foregoing principles to the present case, it seems a narrow construction of the act in question to exempt existing physical things devised for public purposes, such as buildings, ground, books, curios, works of art, etc., and to refuse to exempt a monetary gift made either for the purpose of purchasing such



objects or maintaining those already in existence. The purpose and spirit of the law applies to the money equally with the objects enumerated. Bearing in mind the principles above stated, showing the policy of our law, it seems to the writer of this opinion that the Act of 1919 should be construed to include money left by will to maintain the charitable objects there exempt.

Entertaining these views on the questions briefly stated above, the writer enters his dissent from the opinion of the majority.



**BRIEF IN SUPPORT OF PETITION.**

Mr. Frick was born in the State of Pennsylvania, and Pittsburgh was his domicile. His estate at the time of his death amounted approximately to one hundred million dollars. By his will he left about three-fourths of his entire estate to charity—to hospitals, to universities, to the creation and endowment of a great park in Pittsburgh, and to the incorporation of a wonderful art institute in New York City, which should be forever free to all people, and to which he gave his New York residence, appraised at over \$3,000,000, his art collection, inventoried at over \$13,000,000, and an endowment fund of \$15,000,000.

In Mr. Frick's will he provided that all inheritance taxes should be paid out of his residuary estate. He bequeathed 87 per cent. of the residuary estate to hospitals and colleges and 13 per cent. to his daughter.

When Mr. Frick died he owned property, real and personal—some tangible, some intangible—in eighteen states and in the Dominion of Canada.

At once the United States and these nineteen other sovereignties stretched out their hands for money, and all sought to exact as taxes the last penny possible from the money which Mr. Frick had left to these charities. The estate has settled (sometimes by compromise, sometimes by litigation) with all these sovereignties except the United States and State of Pennsylvania. The executors paid the United States \$6,338,898.68, which they admitted to be due to it, and to the State

of Pennsylvania \$1,978,949.71, which they admitted was due to it. The United States claims a further sum approximating \$3,000,000, which is still under discussion with the Department of Internal Revenue. A part of this is directly involved in this case and awaits its decision, since one of the vagaries of the United States inheritance tax law, as it is administered, is that, in cases where the taxes are thrown upon residuary estates which are bequeathed to charity, the more tax you pay to the several states the more tax you have to pay also to the United States. The State of Pennsylvania claims additional estate tax to the amount of \$1,185,158.14, with interest from December 2, 1920. The Pennsylvania court of last resort has decided that this amount is due. To review this decision a writ of error has been sued out; and it is to review this decision also (in case a writ of error is not the proper remedy) that a *certiorari* is now prayed for.

The petitioner believes that this additional tax should not be paid, because the Pennsylvania Transfer Inheritance Tax Act as construed by the court violates the Constitution of the United States.

The broad question involved is one of jurisdiction or power. The petitioner contends (1) that Pennsylvania cannot levy a transfer inheritance tax on tangible articles of personal property which are located in other states; (2) that in ascertaining the taxable value of the estate which is subject to inheritance taxes in the state of Mr. Frick's domicile, the "paramount" taxes which have to be paid to the United States and other states must be deducted—in this case the United States estate tax and the estate or succession

taxes levied by states other than Pennsylvania on the transfer of shares of capital stock of corporations of other states than Pennsylvania; (3) that in this case, where all inheritance taxes are cast by the terms of the will on the residuary estate, before the tax is calculated a deduction from the estimated value of the estate must be made of the inheritance taxes paid to other states on real estate located in said states and of the inheritance tax paid to the State of Pennsylvania on the general and specific legacies and devises.

After the opinion in this case was handed down by the Supreme Court of Pennsylvania, deciding these questions against your petitioner, an application was made to that Court for the allowance of a writ of error. The petition was accompanied by a petition for a modification of the decree and, as required by the rules of the Pennsylvania Supreme Court, by a petition for a re-argument of the case. On the 23rd day of June, 1923, the Court entered an order amending its prior decree, and made an order dismissing the petition for a re-hearing and also made an order allowing a writ of error from the Supreme Court of the United States. Subsequently the writ of error was formally allowed by the Chief Justice of the Supreme Court of Pennsylvania, a supersedeas bond approved by him, and the writ of error was sued out and filed. There are four appeals from this decision of the Supreme Court of Pennsylvania pending in this court. A stipulation has been filed in this case that this application for *certiorari* may be determined on the record at No. 442 October Term of this Court, and a certified copy of the record has been filed in that case.

In the judgment of petitioner's counsel, this case falls within the class of cases reviewable by a writ of error.

The provision of the Pennsylvania statute imposing a tax on foreign tangibles is this:

"A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situate within this Commonwealth or elsewhere." (Act approved June 20, 1919, Article I, Section 1, P. L. 521, West Publishing Company's Compilation of Pennsylvania Statutes, Section 20465).

The provision of the Pennsylvania inheritance transfer tax act which relates to the tax upon the paramount taxes, is:

"In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." (Act, approved June 20, 1919, Article I, Section 2, P. L., p. 522; West Publishing Company's Compilation of Pennsylvania Statutes, Section 20466.)

The petitioner's contention in the case is that this statute violates her rights under the constitution and laws of the United States.

It is submitted that under the decisions of this Court this case is reviewable by a writ of error, which was properly granted. *Dahnke-Walker Milling Co. vs. Bondurant*, 257 U. S., 282; *Eureka Pipe Line Co. vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277.

The facts are entirely different from the facts in *Dana vs. Dana*, 250 U. S., 220, a case for which this court held *certiorari* to be the correct remedy. In the *Dana* case the writ of error was dismissed because neither the validity of the statute nor the validity of any authority exercised under the state was drawn in question. The court below, the Supreme Judicial Court of Massachusetts, had decided the case on the view which it took of the question whether the property sought to be taxed was real estate or personal property. This court, therefore, held that the Federal question could be raised only on *certiorari*.

Inasmuch, however, as the opinion of counsel may be erroneous on the question of which remedy is the proper one in this case, a petition for a *certiorari* also has been filed.

This brief is filed for the purpose of showing the court that there are Federal questions of public and general importance involved in the case which have never been decided by this court and on which there are conflicting decisions by State Courts.

**POINT I.****The Legislature of Pennsylvania Has No Power to Tax the Transfer of Tangible Chattels Situate Beyond Its Boundaries.**

The State of Pennsylvania has, by act of Assembly, undertaken to tax all property of a resident decedent, real and personal, wherever situated.

A transfer inheritance tax amounting to more than \$600,000 has been levied on tangible chattels which belonged to Mr. Frick at the time of his death, and were then located in New York and Massachusetts.

These tangibles consisted of (a) the art collection, valued at more than \$13,000,000 and located in Mr. Frick's house on Fifth avenue in New York City; (b) furniture, household supplies, etc., located in said house; (c) pictures, furniture and furnishings—live-stock, agricultural implements, etc., located at his estate and summer home at Pride's Crossing, Massachusetts.

So far as the Massachusetts tangibles are concerned upon which the State of Pennsylvania has levied a transfer inheritance tax based on a valuation of \$318,429.25, it has been stipulated that they "consisted of nothing more than the ordinary furniture and furnishings suitable for such residences and estates."



The art collection had an inventoried value of \$13,132,391, and upon this the State of Pennsylvania levied a 5 per cent. tax. This art collection, owned by Mr. Frick at the time of his death, consisted of a great many art treasures, mostly antiques of European and Asiatic origin, and of paintings, rugs, furniture, bronzes, porcelains, etc. Some of the articles, such as panel pictures, were of so unusual a character as to require special rooms to be constructed to hold them. The panel pictures were applied to the walls.

The art collection was at the time of Mr. Frick's death located in the City of New York in the building occupied by him at that time as one of his residences. The building was completed and first occupied by Mr. Frick in 1914, and in 1915 Mr. Frick made his will, in which he made provision for carrying out his intent that the building and its contents should become a permanent public gallery of art to which the public should "forever have access." Subject to the right of Mrs. Frick to occupy the land and building as one of her residences so long as she desired to do so, the land was devised to a corporation to be incorporated by the State of New York, and to be known as "The Frick Collection." Mr. Frick by his will bequeathed all the works of art constituting the collection to this corporation. He provided in his will and made it a condition of the bequest that these chattels should be forever held, maintained and preserved in this house. He bequeathed to the corporation \$15,000,000 also as an endowment fund.

There is no room for fictions or theories as to what the *situs* of these chattels was and is. Every one of

the articles which constitute this collection has a real physical existence and necessarily has a *situs* as surely as the building has. Indeed by the terms of Mr. Frick's will the articles never can be removed to any other *situs*.

In considering a question of this kind, one must bear in mind that where tangible chattels are located in a sovereignty other than that of the decedent's domicile, they must be administered by an ancillary administrator or executor of the country of their *situs*, and that not only have the local creditors the right to be first paid before anything is transmitted to the state of the domicile, but resident specific legatees, and in some instances even general legatees residing in the country where the chattels are, have the right to have their legacies paid before the balance is remitted to the principal administrator.

*Harvey vs. Richards*, 1 Mason, 381.

In this case Mr. Justice Story says that unquestionably the specific legatee is entitled to claim in the jurisdiction where the chattel is, although there be only an ancillary administrator there. So it is perfectly clear in this case that the courts of New York will see to it that this legacy to the Frick Collection is kept in the State of New York. It is the duty of the corporation, the Frick Collection, also, to see that these chattels remain in New York and are distributed to it. And the State of Pennsylvania has no way by which it could get this collection into the State of Pennsylvania and administer it there.

The law of England is the same.

*In re Lorillard, Griffiths vs. Catforth* (1922),  
2 Ch., 638.

The testator, who was domiciled in New York, left assets in England, where there was an ancillary administration. The legatees under the will resided in England, and upon claim being made by the principal administrator in New York that the assets after payment of the British debts should be remitted to him, the application was denied by the English Court of Chancery, which held that the resident beneficiaries under the will had the right to have the balance in the hands of the ancillary administrator distributed to them. Lord Justice Warrington says:

"The persons entitled to the unadministered residue are in this country, and the Court will not order these moneys to be sent to an administrator abroad."

The proposition contended for by petitioner is that the State of Pennsylvania cannot impose an inheritance tax upon the transfer of Mr. Frick's tangible personal property, tangible chattels which were situated outside the State of Pennsylvania, and which, consequently, are not situated in the State of Pennsylvania. The obligation imposed upon a state by the Fourteenth Amendment to the Constitution of the United States requires that the subject-matter of the state's action shall be within the jurisdiction of the state, that is, within its territory. This proposition is so thoroughly established that a justification of the tax imposed by

the State of Pennsylvania in the instant case must be founded either (a) upon the fiction expressed by the words "*mobilia sequuntur personam*"; or (b) upon the proposition that the title to decedent's tangible property outside of the state passes by virtue of the laws of the state of the domicile, and that, therefore, both the state of the domicile and the state of the *situs* can tax; or (c) that because there is money being distributed by the Pennsylvania courts to beneficiaries who must come into Pennsylvania to get their share in the distribution, the State of Pennsylvania can impose a tax upon the property in Pennsylvania and determine the amount of the gross value of the estate by adding to it the property outside the state, which it cannot tax.

(a) In view of the decisions of this court and of the Supreme Court of Pennsylvania, it could not be successfully contended that the fiction of *mobilia sequuntur personam* authorizes the tax, because, under the decisions of the court the fiction must yield to the facts. (*Eidman vs. Martinez*, 184 U. S., 578—see opinion of Mr. Justice Brown, pages 581-582; *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194—see opinion by Mr. Justice Brown, page 206; *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S., 395—see opinion by Mr. Justice Moody, page 402.)

The Supreme Court of Pennsylvania did not attempt to sustain this contention.

(b) The second proposition, that the power of the state to tax could be sustained because the succession to articles of personal property passes under the laws of the state of the domicile, is, we submit, unsound.

While the Supreme Court of Pennsylvania discusses this point, it does not base its decision upon it.

*Tangible* personal property is subject to the dominion of the sovereignty where it is situated. The question who is to be recognized as its owner during the life of the owner is a question solely for the sovereignty where the property is located. To whom the title passes when its owner dies is determined by the law of that sovereignty alone, and does not depend in any degree whatsoever upon the law of any other sovereignty. The question in this case is the validity of Mr. Frick's will in New York and Massachusetts. Is his will valid under the laws of those states? There must be a compliance with the laws of those states before the will will pass title to tangible property in those states. This is true, even though the laws of those states say that the will of a non-resident *executed* in the manner required by the state of his domicile is valid in New York and Massachusetts.

In *Keeney vs. New York*, 222 U. S., 525, Mr. Justice Lamar says (page 537) :

"The real estate and tangible property in Texas were not within the taxing jurisdiction of the State of New York and there was no effort to tax the transfer of that property."

While this statement of Mr. Justice Lamar's is only an expression of his opinion and was not necessary to the decision of the case, it is an expression of opinion in the only case, we believe, that ever reached this court, where there had been any question as to the power of

the state of the domicile to levy an inheritance tax upon tangible chattels located in another state.

The Pennsylvania Supreme Court, in its discussion of this point in its opinion, seems to imply that *Bullen vs. Wisconsin*, 240 U. S., 625, is an authority for the proposition that the State of Pennsylvania could impose this tax upon these tangible chattels. In *Bullen vs. Wisconsin*, however, the property consisted entirely of *intangible* property; and when Mr. Justice Holmes in his opinion speaks of the law of the domicile as being needed to establish the inheritance, he is speaking of *intangible* articles of personal property, and is referring to the cases of "contracts and stock" as illustrative of the point.

There are two decisions of state courts of last resort in which it was expressly held that inheritance taxes can not be imposed by the state of the domicile of the decedent upon tangible chattels situate in another state.

In *Weaver's Estate*, 110 Iowa, 328, it was held that an inheritance tax could not be imposed by the State of Iowa upon a herd of cattle which was in Missouri.

In *State vs. Brevard*, 62 North Carolina, 141, the testator was domiciled in North Carolina but owned property, consisting of realty and personalty, in the State of Alabama. Among his property in Alabama was the Vesuvius Furnace with all its appurtenances, which doubtless included some personal tangibles, but which the report of the case expressly shows

included a number of negro slaves. It was held that this tangible property could not be taxed for inheritance tax purposes in North Carolina, the state of the domicile. The opinion is based upon the reasoning in the very exhaustive opinion of the court in the earlier case of *Alvany vs. Powell*, 55 North Carolina, 51.

The same principle is laid down in *Josylin's Estate*, 76 Vermont, 88. In that case the court held that the State of Vermont could not levy an inheritance tax upon an indebtedness due to a resident decedent from a non-resident, because the real *situs* of the thing was the state of the debtor, and the debt could only be collected by means of the laws of that state. Judge Stafford says (page 92) :

"\* \* \* this portion of the estate did not pass by force of our law at all, for that law had no force in the domicile of the debtors. It passed by force and virtue of the law of those jurisdictions. If they recognize our law as the rule to be followed in distributing the personal estate, just as they would have recognized the law of the place where a contract was made as the law of the contract, that did not make it that the property passed by force of the law of this state, but only that it passed in the same manner as it would have passed by our law."

And again at the bottom of page 93:

"The hand that passes the estate from one generation to another retains a portion as a sort of toll for the service. Which sovereignty is that? Clearly the one which has the right to say who shall succeed."

The only case cited by the State of Pennsylvania, in which a court of last resort has decided that a state may levy an inheritance tax upon tangible articles outside its boundary is *Matter of Estate of Swift*, 137 N. Y., 77 (1893). This is a very curious case; for the only opinion filed is an opinion written by Mr. Justice Gray to sustain the proposition that the tax was invalid. But he says at the end of his opinion that his brethren do not agree with him, and that therefore the decision of the court below is affirmed. So the case is of very little authority. All that we know about it is that the judges of the Court of Appeals of the State of New York decided that the tax was valid, but gave no reason whatever for their decision; while the only opinion filed does demonstrate quite conclusively that such articles are not taxable.

While it was claimed by the respondent's counsel in their brief before the Supreme Court of Pennsylvania that there were two other cases (*Carpenter vs. Pennsylvania*, 17 Howard, 456, and *Hartman's Estate*, 70 N. J. Eq., 664), in which state inheritance taxes upon tangible chattels located outside of the state had been sustained by the courts, an examination of the cases themselves shows that they do not support the contention of the respondent.

In the report of the case of *Carpenter vs. Pennsylvania*, 17 Howard, 456, the only reference to what the personal property was is a statement of Mr. Justice Campbell, made in delivering the opinion of this court, on page 461, which is as follows:

"In that settlement the executor represented



that a portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth \* \* \*."

There surely is nothing here to show that any of the property involved was *tangible* personal property. The case was an appeal from a decision of the Pennsylvania Supreme Court in *Short's Estate*, 16 Pa. St. Reports, 63. The statement of facts in the report of that case on page 63 states explicitly that decedent "owned a large amount invested in stock and corporations in other states, some bonds of the State of Kentucky, etc., in all exceeding half a million of dollars, and above \$1000 of cash in a bank in New York." This certainly discloses no *tangible* chattels located outside of the state. The case is therefore not authoritative for the point on which it is cited; particularly in view of the fact that there is not even any discussion in the opinion of either the Supreme Court of Pennsylvania or the Supreme Court of the United States with reference to the point involved in the instant case.

In *Hartman's Estate*, 70 N. J. Eq., 664, the only point discussed or involved in the decision was whether Mrs. Hartman was a citizen of New York or of New Jersey. It was held that she was a citizen of New Jersey, and that therefore New Jersey could tax on the theory of that being her domicile. There is nothing in the report of the case to indicate that there was any tangible personal property belonging to her located in New York, except that, as she is said to have owned a residence in New York in which she lived, one might perhaps infer that there was furniture in the house, and also infer

that the furniture was assessed for inheritance tax purposes. Likewise there is some reference to her having taken her horses and carriages to Long Branch in the State of New Jersey in the summer, but there is nothing to show whether she kept them in New York City or elsewhere in the winter. It is perfectly clear that there is nothing in the case to show that New Jersey did tax these New York tangibles; and it is also clear that no question was raised by counsel or considered by the court as to whether such tangibles, if they were assessed, were or were not taxable. The sole question, as we have stated above, discussed and decided by the New Jersey Court was whether her domicile was in New Jersey or in New York.

It is a general fundamental proposition, frequently laid down by this court, that the power to tax is correlative with the power to protect; that where a thing is situate outside the territory of the state, the sovereign has no power to protect and cannot tax it.

See *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, particularly Mr. Justice Brown's opinion, beginning at page 202.

*Tappan vs. Merchants National Bank*, 86 U. S., 490, particularly Mr. Chief Justice Waite's opinion at page 501.

These chattels located in the State of New York were entirely outside of the State of Pennsylvania and beyond its power to protect. How they should be dis-

posed of, as well as how they should be protected, was entirely within the jurisdiction of New York.

(c) The decision of the Supreme Court of Pennsylvania is founded upon the third proposition, which is:

That because the property which is being distributed in this proceeding is all in this state, there can be no Federal question involved. The proposition is thus stated by Mr. Justice Simpson (page 36, this book):

"It follows that as the right of transmission is State-created and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive, property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of the decedent's property wherever located."

Under this rule the State of Pennsylvania can levy upon the property which is within her jurisdiction a transfer tax which shall be based upon the value of decedent's property wherever situate; and that, of course, means upon real estate as well as upon tangible personal property. There is no more reason for excluding the one than the other.

This reasoning has all the charm of novelty. The Supreme Court of Pennsylvania relies for support of this conclusion on two decisions of this court. The first one is *Keeney vs. New York*, 222 U. S., 525, in which

Mr. Justice Simpson says the conclusion "is foreshadowed but not expressly decided." We are at a loss to see how it is foreshadowed by the opinion in the *Keeney case*, which we have quoted above, in which Mr. Justice Lamar says distinctly that *tangible* articles located outside the state of the domicile cannot be taxed.

The other case relied on is *Maxwell vs. Bugbee*, 250 U. S., 525, in which Mr. Justice Simpson says the question was fairly raised, and quotes from the opinion of this court as follows:

"When the state levies taxes within its authority property not in itself taxable by the state may be used as a measure of the tax imposed."

It is apparent that the Supreme Court of Pennsylvania misapprehended the case this court had before it and the meaning of the language used. In *Maxwell vs. Bugbee* the question raised was as to the inheritance tax upon *the estate of a non-resident*. The tax was levied with respect only to the local real and tangible personal property in the State of New Jersey, and with respect to stock of New Jersey corporations and national banks located in the State of New Jersey. The provision of the state tax law which was in question is the provision requiring the tax levied to bear the same ratio to the entire tax that would be imposed under the act if the decedent were a resident and all his property were located within the state as his property within the state bears to the entire estate wherever situate, specific devises or bequests of prop-

erty within the state being excluded from the computation.

The complaint of plaintiff in that case was that the act inflicted an unequal tax, which bore more heavily on the estates of non-residents than on the estates of residents. When one reads Justice Simpson's excerpt in connection with what follows it in Justice Day's opinion and in connection with Justice Day's references to authorities, it becomes clear that the excerpt does not support the proposition for which it is cited by the Supreme Court of Pennsylvania. Thus Justice Day says (page 539) :

"In the present case the State imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so within limitations which do not really make the tax one upon property beyond its jurisdiction, the decisions to which we have referred clearly establish."

The instant case involves no such question. It involves the proposition that the state of the domicile may add to that which is within its jurisdiction the value of that which is beyond its jurisdiction and then tax the whole. The Pennsylvania act does "really make the tax one upon property beyond its jurisdiction."

Again, this point involves the question of the meaning of the New York and Massachusetts statutes.

Undoubtedly the States of New York and Massachusetts have the power to decide what laws shall be

good to pass title to tangible chattels in those states and upon whom the title shall devolve; and we contend that they have done so.

For example, Section 17 of the *Decedents' Estate Law of the State of New York* (Book 13, *McKinney's New York Laws*, page 48), Record 246 a, says that no person having a wife, child, husband or parent shall by his last will bequeath to charities more than one-half part of his estate, and that the bequests to charities shall be valid to the extent of one-half and no more. Mr. Frick left more than one-half of his estate to charities. Is his will good in New York in the face of this statutory provision?

The Supreme Court of Pennsylvania says that these provisions "relate, however, only to wills of testators there (in New York) domiciled." (See opinion, this book, page 38). The Court of Appeals of the State of New York has decided exactly the contrary, to wit, that it applies to property situate in New York of which a citizen of another state died seized. It has decided that if the bequest to charities made by the will of a citizen of New Jersey exceeds more than one-half of the net value of his entire estate, real or personal, wherever located, the charitable bequest as to all the property located in New York is void and the property goes to the heirs (*Decker vs. Vreeland*, 220 N. Y., 326). It is the law of New York that is going to decide who owns this Frick Collection; and if the question comes up, it will decide that Mr. Frick's will was valid in spite of this provision because his widow and children saw fit to ratify the bequest after his

death; and this is so because that is the law of the State of New York (*Amherst College vs. Ritch*, 151 N. Y., 282).

So too, there are many other statutes, both of New York and of Massachusetts, introduced into the record in this case which show that the validity and effect of Mr. Frick's will is to be determined by the laws of those states.

## **POINT II.**

### **The State of Pennsylvania Has No Power to Levy a Transfer Inheritance Tax Based on a Valuation of the Estate Which Fails to Deduct the Paramount Taxes—The Paramount Liens Imposed by the United States and by the States Where the Property is Located.**

Everyone must admit that the taxing power of the United States Government is supreme; therefore, all that was left of Mr. Frick's estate, the transfer of which the State of Pennsylvania could tax was the remainder after the Federal tax was paid.

Equally so, as Mr. Frick owned stock in the Atchison, Topeka & Santa Fe Railroad, a corporation of the State of Kansas, and the Pennsylvania executors could not get possession of, or exercise any dominion over, the shares until they had paid the Kansas inheritance transfer tax amounting to \$353,887.04, the State of Pennsylvania had no power to tax the estate on a valuation of this Atchison stock at its stock exchange quotation the day Mr. Frick died, disregarding the paramount lien of the State of Kansas. The same thing applies to all the "foreign" stocks.

Mr. Justice Frazer of the Supreme Court of Pennsylvania, in his dissenting opinion in this case, points out the reason why the State of Pennsylvania can-



not impose an estate tax upon the whole estate without deducting the Federal tax: because to do so does, in truth and fact, compel the residuary legatee to pay a tax upon the paramount tax which they have already paid to the Federal Government.

Justice Frazer says (this book page 49) :

"If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States."

Mr. Justice Sweeney, in his dissenting opinion in *Hazard vs. Bliss*, 113 Atlantic, 469 (Rhode Island Supreme Court, May 4, 1921), expresses the same idea as follows:

"By operation of Federal law the net estate left by the decedent has been depleted by the amount of the tax and the deceased was deprived of the right to transfer so much of his net estate as would be required to pay the Federal Estate tax. The decedent had the right to dispose of only so much of his net estate as would be left after the deduction and payment of the Federal tax and the residuary legatee had the right to receive from the decedent only so much of his estate as would be left after the deduction and payment of the Federal Estate tax."

It is not necessary at this time to call the attention of this court to the long line of cases, beginning with *McCulloch vs. State of Maryland*, 17 U. S., 315, but we desire to mention *Flaherty vs. Hanson*, 215 U. S., 515, in which it was held that the requirement of a North Dakota statute, that the holder of a United States liquor license must record it in a certain manner in the State of North Dakota and pay a recording fee of \$25, was an invalid interference with the taxing power of the United States.

It seems to us that there is no escape from the proposition that when a state undertakes to levy an inheritance tax upon the full value of a decedent's property without deducting the paramount United States tax it assumes an increase in the amount of the estate which would pass from the decedent to his heirs equal to the amount of the Federal tax, and, consequently levies a tax upon the Federal tax.

Just so with reference to the paramount taxes which are imposed by other states and are liens upon stock of corporations of those states. We turn, for an example, to the Atchison stock held by Mr. Frick. The State of Kansas had upon that stock a paramount lien amounting to \$353,000, which attached at once upon Mr. Frick's death. It was just as much a lien upon the stock as if the stock had been pledged with a Kansas bank as collateral for a loan. The value of the stock to Mr. Frick's estate in Pennsylvania on the day he died could not be more than its market value on that day less the \$353,000 of paramount Kansas taxes. And when the State of Pennsylvania undertakes to disre-

gard the Kansas tax it really imposes an inheritance tax upon the Kansas tax.

The California court of last resort has reached a conclusion in direct antagonism to the Pennsylvania Supreme Court in the instant case: *Re Estate of Henry Miller*, 195 Pacific, 413 (1921). Mr. Justice Olney says at page 417:

"The authority of the state having actual control of the subject-matter, either because it is personal property within its limits, or because, as in this case, it is the stock of one of its corporations, is, of necessity, the superior. The state of the decedent's domicile can deal with the property only after the requirements of the state of its actual *situs* are satisfied. Putting it in another way and concretely, the stock of Henry Miller in the Nevada corporation comes into his California estate, there to be administered upon and taxed, only after the requirements of Nevada are complied with, and the only thing over which California secures authority is what remains after Nevada has taken its tax."

**POINT III.**

**As in This Case, Under Mr. Frick's Will All Inheritance Taxes Are Thrown Upon the Residuary Estate, and as, Regardless of the Will, All Federal Estate Taxes Are by the Law Cast Upon the Residuary Estate, and as the Supreme Court of Pennsylvania Has Decided That This Is an Estate Tax and the Same Result Would Be Reached by the Pennsylvania Statute, It Is Contended that the Taxation of the Estate Passing to the Residuary Legatees, Without Deducting the Inheritance Taxes Paid Other States on Real Estate Located in Other States and the Transfer Taxes Paid the State of Pennsylvania on the General and Specific Legacies and Devises, Is Unconstitutional.**

The question is, Can Pennsylvania not only tax the estate transferred, but also tax the taxes?

In the instant case, where the burden of all taxes is thrown upon the residuary legatees and directed to be paid out of the residuary estate, the Pennsylvania executors paid the inheritance taxes due other states on all the foreign real estate. The question is, Can the State of Pennsylvania make the residuary legatees pay a tax on the estate without a deduction of the

taxes paid on the foreign real estate? Using as an argument an illustration: Let us assume that a resident of Pennsylvania dies possessed only of foreign real estate. The heirs pay the tax in the foreign state upon the transfer of the real estate and go into possession. Under what power and by what process can the State of Pennsylvania collect a tax imposed upon the taxes paid to the foreign state? It is only from such estates as have other assets in Pennsylvania that the State of Pennsylvania may ever hope to collect such a tax. Does this give to estates that have assets in Pennsylvania the equal protection of the laws? Does not this statute essentially lack uniformity in that it collects from estates of residents a tax upon foreign assets where the estates have assets in Pennsylvania, and yet collects no tax from the estates of residents which consist entirely of foreign assets?

Under the same conditions the executors have paid the Pennsylvania inheritance taxes upon the portion of the estate devised to the general and specific legatees. But in arriving at the amount of the tax which must be paid under the terms of the will and the Pennsylvania statute by the residuary legatees, the taxing authorities by failing to deduct from their calculated residuary estate the taxes paid on the specific and general legacies and devises have imposed a tax upon a fictitious residuary estate, which is not in the hands of the executors for distribution.

The Pennsylvania Act is somewhat peculiar. While the Supreme Court of Pennsylvania has said that the tax is an estate tax imposed upon the amount of the

whole estate, still under the terms of the act it is perfectly clear that executors have the right to deduct from the legacy of each legatee only the tax on the portion of the estate which he receives; whereas, in this case, by failing to deduct from their calculated unreal residuary estate the tax imposed upon the specific and general legacies, the taxing authorities have imposed upon the residuary legacies a tax upon the other taxes. To put it another way. You have here an act which in terms imposes upon the property received by the legatees a tax at specified rates based upon their relationship or lack of relationship to the decedent, whether such beneficiaries be general, specific or residuary legatees. The effect, however, of this adjudication is that the residuary legatees in this case are required to pay a tax on what they actually receive at a higher rate than residuary legatees in other estates pay; and this, not because of the provision in Mr. Frick's will requiring his executors to pay all the taxes out of the funds of the estate, which has the effect of imposing such taxes upon the residuary legatees, but because of the action of the taxing authorities in arbitrarily adding the amount of those taxes to the amount of money which the residuary legatees actually receive.

*It is respectfully submitted that if the writ of error already granted is not the proper remedy in this case, the Federal questions involved are of such great and general importance, and there is such conflict and confusion between the decisions of state courts of last resort upon these points, that a writ of certiorari should be granted by your Honorable Court to the*

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end that there shall be an authoritative decision of the extent of the taxing power of the states and a proper adjudication of petitioner's rights under the United States Constitution and laws.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Petitioner.*





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SEP 21 1923

# Supreme Court of the United States

124  
NO. ~~444~~ OCTOBER TERM, 1923.

ADELAIDE H. C. FRICK, HELEN C. FRICK,  
CHILDS FRICK, HENRY C. McELDOWNEY  
and WILLIAM WATSON SMITH, Executors of  
the Last Will and Testament of Henry C. Frick,  
Deceased, Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

A Writ of Error has been allowed in this case by the  
Chief Justice of the Supreme Court of Pennsylvania  
and docketed at this number and term. This  
petition for certiorari is filed in the case to meet  
the possible contingency that the questions in-  
volved cannot be heard on writ of error.

✓  
✓ GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
Attorneys for Petitioners.



## **Notice of Application for Writ of Certiorari.**

Notice is hereby given that the above named petitioner will, on Monday, October 1st, 1923, at the opening of the Court, or as soon thereafter as counsel can be heard, present her verified petition, which has been filed in the office of the Clerk of the Court, and a copy of which is hereto annexed, together with copy of the entire record in this cause, to the Supreme Court of the United States, at the Court rooms in the Capitol in the City of Washington, D. C., and will, at such time and place, move the Court to issue its writ of certiorari to the Supreme Court of the State of Pennsylvania to review the decision of said Court rendered in the above named cause.

GEORGE WHARTON PEPPER,

GEORGE B. GORDON,

*Attorneys for Petitioner.*

Dated September 17, 1923.

To:

COMMONWEALTH OF PENNSYLVANIA,

HON. GEORGE W. WOODRUFF,

Attorney General.

HON. DAVID A. REED,

Attorneys for the Commonwealth of  
Pennsylvania.

THE HISTORY OF THE  
CITY OF BOSTON

FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME  
BY  
JOSEPH NEALE  
OF THE BOSTON BAR  
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# Supreme Court of the United States

NO. 444 OCTOBER TERM, 1923.

ADELAIDE H. C. FRICK et al., Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## **Petition for Writ of Certiorari to Review a Decision of the Supreme Court of Pennsylvania.**

*To the Honorable The Supreme Court of the United  
States:*

The petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, Executors of the last will and testament of Henry C. Frick, deceased, respectfully shows:

1. In the matter of the Estate of Henry C. Frick, originally in the Orphans' Court of Allegheny County, Pennsylvania, an adjudication was made as to the transfer inheritance (estate) taxes due to the State of Pennsylvania from the Estate of Henry Clay Frick, who was a citizen of Pennsylvania and was domiciled there at the time of his death. Your petitioners are

the executors of his will. The executors paid voluntarily to the Commonwealth of Pennsylvania the sum of \$1,978,949.71, which they claimed was the amount payable as a transfer inheritance tax to the State. The Commonwealth of Pennsylvania claimed that it was entitled to the additional sum of \$1,188,248.16. About one-half of this additional amount was arrived at by adding to the taxable value of the estate, as returned by the executors, the value of tangible articles of personal property (that is, Mr. Frick's art collection and household furniture), which were located at the time of his death in his residences in the States of New York and Massachusetts and upon which inheritance taxes had been paid to the States of New York and Massachusetts, respectively, to the extent that they were taxable under the estate tax laws of those states. Your petitioners claimed that it was beyond the power of the State of Pennsylvania to levy any inheritance tax upon those articles and that said tax constituted a violation of the Fourteenth Amendment. The remainder of the increased amount of tax was caused by the disallowance by the Orphans' Court of Allegheny County (in ascertaining the taxable value of the residuary estate) of certain deductions claimed by the executors, which consisted of estate and inheritance taxes paid to the United States and some eighteen of the states constituting the United States and to the Province of Quebec (upon real estate located in those states and shares of stock of corporations incorporated under the laws of those states). Your petitioners claimed that the failure to allow these deductions in ascertaining the taxable value of the residuary estate



was a violation of the Constitution and laws of the United States.

Petitioners prosecuted an appeal to the Supreme Court of Pennsylvania and said court decided the questions adversely to petitioners' contention. There are seven justices of the Supreme Court of Pennsylvania, of whom five participated in the argument and the decision. One justice was ill and one was disqualified for the reason that he had been Attorney General of the State and counsel for the Commonwealth at the the time this controversy originated. The opinion of the court was rendered by Justice Simpson and concurred in by Chief Justice Von Moschzisker and Justices Walling and Kephart. Justice Frazer filed a dissenting opinion. Your petitioners made an application to the Supreme Court of Pennsylvania for the allowance of a writ of error from this court. The Supreme Court of Pennsylvania held that this was a proper case for the allowance of a writ of error and the writ was allowed by Robert Von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania. The writ of error was duly sued out and has been filed in this court and docketed at this number and term. While petitioners have been advised by their counsel that in counsel's opinion this is a case which can properly be brought to this court by a writ of error, they have also been informed that there is possibly some doubt as to whether the correct remedy is not *certiorari*; and therefore your petitioners seek to have this court review the decision hereinbefore referred to on *certiorari* in case it should be held that the case is not properly here upon a writ of error.

2. The first question involved in this litigation is whether the State of Pennsylvania did not exceed its power and jurisdiction when it passed this statute which as applied to this case provides that there shall be included in the taxable value of the estate tangible articles of personal property located at the time of Mr. Frick's death in his two residences in New York City, New York, and Pride's Crossing, Massachusetts, and whether, in collecting an inheritance tax upon the value of those articles, it did not violate the due process clause of the Constitution of the United States.

3. Petitioners' next contention is that, when the Commonwealth of Pennsylvania, in ascertaining the tax which must be borne by the residuary legatees, refused to allow as a deduction from the taxable value of the estate the estate tax levied by the United States Government which had been paid to the amount of \$6,338,898.68, it violated clause 1 of section 8 of Article I of the Constitution of the United States in that it interfered with the power of Congress to 'lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States' and also clause 2 of Article VI of the Constitution of the United States in that it denied that the said Constitution and the laws of the United States made in pursuance, to wit, among others, sections 400 to 410, inclusive, of an Act of Congress of the United States, entitled "An act to provide revenue and for other purposes," approved February 24, 1919 (40 Stat., pp. 1096-1101) and section 3467 of the United States Revised Statutes, are the supreme law of the

land and that the judges in every state are bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding, and also clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprived your petitioners of property without due process of law and also denied to them the equal protection of the law.

4. Petitioners' next contention is that so much of the judgment of the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania as directs the payment of the tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid to other states on the transfer of real estate in other states will deprive petitioners of their property without due process of law in violation of clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

5. Petitioners' next contention is that so much of the tax authorized and directed to be paid by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania as includes a tax on the estimated value of the estate, without a deduction of inheritance taxes paid to other states on the transfers of shares of stocks of corporations incorporated under the laws of those states, will deprive your petitioners of their property without due process of law and will de-

prive them of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

6. Your petitioners' next contention is that, in so far as the decree of the Orphans' Court of Allegheny County and of the Supreme Court of Pennsylvania distributes to the Commonwealth of Pennsylvania a sum of money which includes a tax on the estimated value of the estate without a deduction of the Pennsylvania inheritance tax from the estimated value of the gross estate the effect of such action is to increase the taxable value of the residuary estate, the residuary legatees are deprived of their property and the said tax is invalid on the ground of its being repugnant to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives your petitioners of property without due process of law and also denies to them the equal protection of the laws.

7. The facts upon which this controversy arises are as follows: Mr. Henry Clay Frick died in the City of New York on the 2nd day of December, 1919. He left a last will and testament dated the 24th day of June, 1915, probated on December 6, 1919, in the office of the Register of Wills of Allegheny County and of record in Will Book Volume 160, page 6. This will is in writing. It was subscribed at the end by Mr. Frick in the City of Pittsburgh, Pennsylvania. It was attested by the written signatures of three citizens of Pittsburgh and was in Pittsburgh at the time of his death. Mr. Frick was born in the State of Pennsylvania and he was continuously domiciled in said State from his birth until his death.

Mr. Frick, at the time of his death, had three houses. One, known as Clayton, is located in the City of Pittsburgh, Pennsylvania. It was acquired by him soon after his marriage and given (conveyed) by him shortly thereafter to his wife. This was his legal domicile, so denominated by him when he registered every year as a voter in the voting precinct and ward of the City of Pittsburgh in which the house is situated. Another of his residences was a house at Pride's Crossing in the State of Massachusetts. By his will he devised to his wife a life estate in this property and the remainder to his daughter. He bequeathed to his wife all the tangible personal property (furniture, pictures, etc.) located in and about this residence. The taxing authorities of the State of Pennsylvania did not attempt to include the value of this real estate in Mr. Frick's taxable property, but they included the value of the tangible personal property located there at a valuation of \$325,534.25 and levied a transfer inheritance estate tax thereon. This levy has been sustained by the Orphans' Court of Allegheny County, Pennsylvania, and by the Supreme Court of Pennsylvania, the court of last resort.

Mr. Frick also owned another residence on Fifth Avenue in the City of New York, the land and buildings being of the value of upwards of \$3,000,000. This residence he devised to a charitable corporation of the State of New York known as "The Frick Collection," but he gave his wife the right or license to use it "so long as she should occupy the same as one of her residences." The State of Pennsylvania has not attempted

to tax this real estate, although the Act, the constitutionality of which petitioners are here attacking, directs such a levy to be made. Contained in this residence were Mr. Frick's collection of paintings, antique furniture and other objects of art. These he bequeathed to said corporation of the State of New York known as "The Frick Collection," with the mandatory provision that the collection should always be retained and maintained in said residence for the use and benefit of all persons whomsoever. This residence also contained certain other furniture, household supplies, etc., which were not a part of the Frick Collection. These Mr. Frick bequeathed to his wife. The State of Pennsylvania valued the articles of personal property comprising "The Frick Collection" at \$13,132,391, and valued the rest of the tangible personal property (furniture, etc.) that was in this residence and garage adjacent thereto at \$77,81875. The Commonwealth included these valuations in its estimate of the taxable value of the estate and levied a tax thereon. Your petitioners contend that these articles of tangible personal property were beyond the dominion of the State of Pennsylvania, and that the Pennsylvania Act, in so far as it authorized and directed a tax to be levied on them, is a violation of the Constitution of the United States, has the effect of reducing the residuary estate by upwards of \$600,000 and deprives petitioners of their property.

The balance of the tax in controversy in this case, amounting to upwards of \$500,000, was caused by the refusal of the State of Pennsylvania (in accordance

with the mandate of the statute as it was construed by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania) to deduct from the total taxable value of the estate before levying the tax four items: (a) estate taxes paid to the United States which were a paramount lien upon the whole estate; (b) transfer inheritance estate taxes paid to other states upon real estate located in those other states; (c) transfer inheritance taxes paid to other states and to the Dominion of Canada upon shares of capital stock of corporations organized under the laws of those states and the Dominion of Canada, which were a paramount lien upon those shares and where the shares could not be reduced to possession by the executors or over which no act of dominion could be exercised by them until such foreign taxes were paid, and (d) the inheritance taxes imposed by the State of Pennsylvania upon the general and specific devises, which taxes, so paid, amounted to \$1,925,247.61 (which will be increased if this decision of the Supreme Court of Pennsylvania stands by the additional amount of \$1,200,000).

Some of these taxes by the law and all of them by the terms of Mr. Frick's will are thrown upon the residuary estate.

Your petitioners contend that all of the additional Pennsylvania estate taxes were imposed in violation of their rights under the Constitution of the United States:

8. Therefore:

THE FUNDAMENTAL QUESTIONS INVOLVED  
IN THE CASE ARE

(1) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication made in this case in conformity with it impose a transfer inheritance tax on tangible articles of personal property located at the time of their owner's death in Massachusetts and New York, has not the Commonwealth exceeded its power, and do not the statute and the adjudication violate the Constitution of the United States?

The tangibles in Massachusetts were located at the testator's summer home at Pride's Crossing. They were given by the will to Mrs. Frick and consisted of paintings, furniture, household stores, farm implements, etc. The tangibles in New York were located at the testator's New York house. They were given by the will in part to Mrs. Frick and in part to the Frick Collection, a charitable corporation of the State of New York, which the testator by his will directed to be formed for the purpose of receiving them, and to which he devised the New York house. The tangibles given to the corporation consisted of decedent's paintings, antique furniture and other objects of art which were contained in the New York house, and were bequeathed with the provision that they must remain in that build-



ing forever. The tangibles given to Mrs. Frick consisted of the contents of the New York house other than the art collection, such as household stores, etc., and the contents of the garage, such as automobiles, tools, etc.

(2) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication in this case made in conformity with it impose a transfer inheritance tax to be paid by the residuary legatees and devisees without a deduction from the gross estate of the amounts paid (a) to the United States as an estate tax; (b) to other states as taxes on real estate; (c) to other states as taxes on the transfer of shares of stock of corporations of those states; and (d) to the Commonwealth of Pennsylvania as inheritance taxes on general and specific legacies, does not said act exceed the power of the Commonwealth of Pennsylvania and violate the Constitution of the United States?

Petitioners contended in the Pennsylvania courts that the Pennsylvania Inheritance Tax Law of 1919, under which this tax was levied, imposes a succession tax which applies only to the bequests received by the various beneficiaries. The Supreme Court of Pennsylvania has decided to the contrary; that is, it has decided that this act imposes an estate tax and not a succession tax. Petitioners concede that the decision of the Pennsylvania courts upon the meaning of the statute is not reviewable here. The Pennsylvania inheritance tax act, as construed by the Pennsylvania courts, imposed an estate tax upon the whole property, real and personal, of which the decedent died seized, wherever situate, and allowed deductions to be made only for

debts of the decedent and administration expenses. The tax imposed by the act, however, is not uniform, but is classified according to the relationships of the beneficiaries to the deceased. Under this statute, the bequests to Mr. Frick's wife and his lineal descendants were subject to a two per cent. tax. All other devises and bequests were subject to a five per cent. tax. The Pennsylvania act contains no exemption for charities.

In order to assess the tax at the different rates, admittedly a difficult if not impossible thing to accomplish where the tax is levied upon the decedent's whole estate and not upon the gifts to the beneficiaries, the taxing authorities adopted the following method, which the Supreme Court of Pennsylvania by affirming the decision of the Orphans' Court of Allegheny County has sustained.

This is the way they made their levy. They first took the values of all the real estate in Pennsylvania specifically devised (except the devise to the City of Pittsburgh for a park which was not taxable) and of all the personal property specifically bequeathed, wherever situate, and calculated a tax on them at the rate of either two or five per cent. They then took from the will the amounts of the general legacies and assessed a tax on those at the proper rates. This brought the calculation to a point where they had found the value of the real estate in Pennsylvania and all the other property disposed of by the will, except the residuary estate, to be \$55,783,794. This it will be understood is the sum of the general and specific bequests and devises (excluding real estate outside of Pennsylvania). They then fixed the value of the entire estate,

excluding real estate outside of Pennsylvania, at \$89,675,098.45. From this total valuation they subtracted the sum of the specific devises and bequests and reached a residue of \$33,891,304.45. From this residue they deducted the estimated administration expenses and debts of the decedent amounting to \$9,187,177.90, leaving an estimated balance of \$24,704,126.55, which the Orphans' Court of Allegheny County has christened "the net residuary estate." The taxing authorities then proceeded to tax thirteen-hundredths of this so-called net residuary estate at two per cent. because it is bequeathed to the daughter of the decedent, and eighty-seven-hundredths at five per cent. because under the will it goes to various charities. These two sums they added to the tax on the specific and general devises and legacies, which gives an aggregate amount of \$3,064,107.85. Deducting \$1,978,949.71 previously paid by the executors on account, and adding \$103,090.02 interest, they arrived at a total unpaid tax claim of \$1,188,248.16. This is the amount for which the Orphans' Court of Allegheny County entered judgment. The Supreme Court of Pennsylvania on appeal by the Commonwealth added \$100,000 (and interest thereon) to this amount, being a tax of five per cent. on what is known as the Park Endowment Fund of \$2,000,000, which the court below had found was not taxable.

The actual net residuary estate is not this fictitious amount of \$24,704,126.55 arrived at as shown above. There is no such amount of money in the residuary estate, and the residuary legatees will never get it.

The amount of money actually in the residuary estate is this estimated amount less \$6,338,898.68 paid to the United States as Federal inheritance taxes, less \$1,084,459.42 paid to other states and countries as taxes, less \$1,978,949.71 paid to the Commonwealth of Pennsylvania as inheritance taxes, that is to say, less a total sum of \$9,402,307.81. So the actual residuary estate now in the hands of the executors is only \$15,301,818.74. Moreover, if this decision of the Supreme Court of Pennsylvania stands, the residuary estate will be still further reduced by about \$1,300,000, additional Pennsylvania taxes that will have to be paid; and, if the Commissioner of Internal Revenue is successful in the contention he is making for additional United States estate tax, it will be reduced by the further sum of \$3,100,000. This will bring the real value of the residuary estate down to about \$10,901,818.74. So that the actual net residuary estate, which it may be assumed the residuary legatees will receive, if it is not still further depleted by taxes, is not twenty-five million dollars, but between eleven and fifteen million dollars.

Petitioners aver that the estate is deprived of its property without due process of law when, under the mandate of the Pennsylvania statute as construed by the court, it is compelled to pay an inheritance tax figured upon a residuary estate, arbitrarily assumed or ordered or decreed to be twenty-five million dollars, but which, in point of fact, is only somewhere between eleven and fifteen million dollars.

9. While your petitioners have been advised by counsel that the writ of error which has been allowed

in this case is their proper remedy under the decisions of this court (see *Eureka Pipe Line Company vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Company vs. Hallanan*, 257 U. S., 277; *Dahnke-Walker Milling Company vs. Bondurant*, 257 U. S., 282), if the court should be of the opinion that the questions involved in this case cannot properly be raised upon a writ of error, then petitioners respectfully submit that a writ of *certiorari* should be granted in this case for the following REASONS:

(a) Because the decision of the highest court of the State of Pennsylvania involves federal questions which were clearly raised in every court and at all stages of the proceedings and were definitely decided and passed upon adversely to petitioners' contention by the opinion and decree of the highest court of the state, to wit, the Supreme Court of Pennsylvania;

(b) The federal questions involved are questions of general and great importance and have never been decided by this court;

(c) There is a conflict between the decisions of the courts of last resort of various states as to whether or not the state in which a decedent was domiciled at the time of his death may lawfully levy an estate or succession tax upon tangible articles of personal property situate in some other state. This question, which depends upon the United States Constitution, has never been decided by any federal court.

(d) The intense pressure for money to use for governmental purposes is felt by each of the states of the Union, as well as by the government of the United States. In response to this pressure, several states are

developing a tendency to reach out beyond their limits and subject to taxation for their own purposes property which all will admit is subject to taxation by the state of its situs. Such a situation tends to chaos. The present situation is that inheritance taxes are being levied by the federal government, by the state wherein the decedent was domiciled, by the state in which his real estate was located, by the state in which his tangible personal property was located, by the state where the corporation in which he owned stock was domiciled, by the state in which his debtor was domiciled, by the state in which some railroad corporation domiciled in some other state has a line of tracks, and so on indefinitely. There should be an authoritative decision of this court as to whether or not the state of the domicile can levy an estate tax on the furniture in a summer residence which the decedent owned in some other state. That is one of the questions involved in this case. The more important one as to the amount involved is, Can Pennsylvania levy an estate tax on Mr. Frick's great art collection which is located in New York and which can never be removed therefrom or brought into Pennsylvania?

(e) There is a conflict between the decisions of the States of Pennsylvania and New York as to the construction of a New York statute.

The Supreme Court of Pennsylvania in this case says that the New York statute which limits the proportion of the estate which a decedent may give to charity (this is a vital question involved in the present controversy bearing upon the point whether the be-

quest known as The Frick Collection passed under Mr. Frick's will or whether it passed under the release or assignment executed by his widow and children after his death) does not apply to property in New York belonging to a Pennsylvania citizen. (See Justice Simpson's opinion (page 38 of this book), beginning with the sentence, "These (New York statutes) relate, however, only to wills of testators there domiciled \* \* \*"; whereas, the Court of Appeals of the State of New York has decided that the statute applies to property in the State of New York, of which a decedent who was a citizen of another state died seized: *Decker vs. Vreeland*, 220 N. Y., 326.

(f) It is submitted that the controlling reason given by the Supreme Court of Pennsylvania for sustaining the constitutionality of this act, by which the State of Pennsylvania levied this tax on tangible articles of personal property located outside the state (which act requires the levying of an inheritance tax upon all property, real and personal, wherever situate, which belonged to any person domiciled in Pennsylvania), is unsound. The reason advanced by the court is that, because "the property being distributed on this proceeding is all in this state; appellants are our citizens and duly appeared and contested the claim of the Commonwealth, \* \* \*," and because the court has jurisdiction over the person who raises the question (that is, one of the residuary legatees, who is a citizen of Pennsylvania), and the decedent, the State having jurisdiction over both—the decedent having been and appellants being now domiciled in the State—and the latter appearing to the action, all the

property now being distributed being within the State and a valid state statute lawfully imposing the tax, the United States Constitution has no bearing upon the case. (See Justice Simpson's opinion, this book, pages 30 and 31.)

The residuary legatee referred to as a citizen of Pennsylvania was entitled to thirteen-hundredths of the residuary estate; the rest of the residuary estate goes to charity. Under the construction placed upon this act by the Pennsylvania Supreme Court to wit, that it is an estate tax, as well as under the provisions of Mr. Frick's will, the burden of the whole of these inheritance taxes is cast upon the residuary legatees. Fifty-three per cent. of the residuary estate goes to Princeton University, Harvard College, Massachusetts Institute of Technology and the Society of the Lying-in Hospital of the City of New York, none of which institutions are domiciled in Pennsylvania. The right of the State of Pennsylvania to impose the tax cannot be any different whether the question was raised by a citizen of Pennsylvania or by Princeton University, a citizen of New Jersey. Besides this, the question was also raised by your petitioners, the executors, who represent all the residuary legatees, resident and non-resident.

In *Koch's Estate*, 4 Rawle 268, the Supreme Court of Pennsylvania decided that the administrator could prosecute an appeal from a decree of distribution affecting the interests of legatees residing abroad.

(g) In ascertaining the value of the estate for the purpose of imposing a transfer inheritance estate



tax by the State of decedent's domicile, must there not under the Constitution and laws of the United States be deducted (1) the inheritance tax which the executors were compelled to pay to foreign states under whose laws corporations in which decedent owned stock were incorporated, before said shares of stock could be reduced to possession by the executors; (2) the estate tax levied by the United States under the Acts of Congress; (3) the inheritance taxes paid to foreign states upon real estate located in such foreign states; (4) the inheritance *estate* tax levied by the State of Pennsylvania upon the general and specific legacies and devises.

All these are questions of general importance and none of them have ever been decided by this court.

Wherefore, your petitioners respectfully pray that, if in the opinion of this Honorable Court a writ of error does not lie in this case, a writ of *certiorari* may issue out of it under the seal of this court, directed to the Supreme Court of Pennsylvania, commanding the said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in said Supreme Court of Pennsylvania in this case, to the end that the case may be reviewed and determined in this court as provided in section 240 of the Act of Congress designated as the Judicial Code, and the said decree of the Supreme Court of Pennsylvania in this case and every part thereof may be reviewed by this Honorable Court and the decree of the Supreme Court of Pennsylvania may be reversed and the decision and

decree of the Orphans' Court of Allegheny County may also be reversed.

And your petitioners will ever pray.

ADELAIDE H. C. FRICK,  
HELEN C. FRICK,  
CHILDS FRICK,  
HENRY C. McELDOWNEY,  
WILLIAM WATSON SMITH,

*Executors of the last will and  
testament of Henry C. Frick,  
deceased, Petitioners.*

By

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Their Attorneys.*

*State of Pennsylvania,* } ss:  
*County of Allegheny.* }

William Watson Smith, being duly sworn, says that he has read the foregoing petition and knows the contents thereof and that the same is true as he is advised and believes.

Sworn to and subscribed before me, this ..... day  
of ....., 1923.

**Opinion of Majority of the Supreme  
Court of Pennsylvania.**

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IN THE SUPREME COURT OF PENNSYLVANIA  
FOR THE WESTERN DISTRICT

ESTATE OF HENRY C. FRICK, Deceased.

Appeals of THE COMMONWEALTH OF PENNSYLVANIA.	}	Nos. 39 and 40 October Term, 1923.
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Appeals of HELEN C. FRICK, a residuary legatee.	}	Nos. 42 and 44. October Term, 1923.
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Appeals of ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK, HENRY C. McELDOWNEY and WILLIAM WATSON SMITH, Ex- ecutors of the last will and testament of HENRY C. FRICK, deceased, and HELEN C. FRICK, a residuary legatee.	}	Nos. 43 and 45. October Term, 1923.
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Six appeals from Decrees of the Orphans' Court of Alle-  
gheny County, as of December Term, 1920, No.  
476, and of March Term, 1922, No. 171.

**OPINION OF THE COURT.**

SIMPSON, J.

We are asked by these six appeals to review the action of the court below in determining the amount of inheritance tax due by the estate of Henry C. Frick, deceased, to this Commonwealth, of which he was a resident, and in which he was domiciled when he died

on December 21st, [2nd] 1919. A number of points are raised; some concern the interpretation of the Constitution of the United States or of this State; others the construction of our Inheritance Tax Act of June 20, 1919, P. L. 521; and still others the meaning of testator's will. The argument took a wide range, possibly because of a belief regarding the importance of the question raised, due partly to the large amounts involved; and perhaps also because of a conviction, in which the writer shares, that the State should have as part of its public policy, a refusal to tax any gift for a "purely public charity," since no valid reason can be given for taxing the public for the benefit of the public. Whatever appellants' reasons may be, however, we are compelled to follow along the lines of the able arguments presented, though this results in what would ordinarily be considered an unnecessarily long opinion.

By testator's will (so far as it need be considered here), he gave to certain trustees "all the books, pictures, paintings, \* \* \* antique or artistic furniture" \* \* \* contained in his dwelling house in New York City, to be held by them until a corporation, to be known as "The Frick Collection," should be formed, under the laws of the State of New York, when these articles should be transferred to it; he gave the rest of his personal property in said dwelling house, and also in his residence at Pride's Crossing, Massachusetts, to his wife "excepting, however, from this bequest, all articles of personal property" given to the trustees and corporation above stated; he gave to the city of Pittsburgh a tract of 151 acres of land "as a public park," and to the Union Trust Company of that City, the sum of \$2,000,000, the income therefrom to be used in "maintaining,

improving, embellishing and adding to the said park, and keeping the same in proper condition;" and he directed "that all inheritance, legacy, succession or similar duties or taxes, which shall become payable in respect to any property or interest passing under my will \* \* \* shall be paid out of the capital of my residuary estate," which, as found by the court below, amounted to \$24,704,126.55.

After the probate of the will, the executors paid to the United States the sum of \$6,338,898.68 being the Federal Estate Tax upon the property left by decedent; to various States and the Province of Quebec, the sum of \$1,084,459.42, being the inheritance taxes chargeable under their laws; to the State of New York the sum of \$131,000; and to this Commonwealth the sum of \$1,978,949.71, the inheritance tax which the estate admitted to be due. The governments specified do not concede the first three of these payments to be sufficient in amount; whether or not the last one is, is the question to be decided in this opinion.

By proper proceedings before the register of wills of Allegheny County, the amount of the tax due this State was found to be largely in excess of the sum already paid, whereupon the executors and one of the residuary legatees appealed to the orphans' court of the county, which determined a smaller amount was due, and later, on an adjudication of the executors' account, awarded to the Commonwealth the additional sum of \$1,188,248.16. It was reached by assessing the proper percentages on the total value of the real estate in Pennsylvania, and of the personalty wherever found (the valuations being agreed upon); the \$5,156,625.00 worth of realty located elsewhere not being considered or included.

From these two decrees the present appeals were taken; two of them by the Commonwealth, alleging additional taxes should have been assessed, and the other four by the executors and a residuary legatee, averring that too much was awarded. No claim was made upon the fund except by the State and the legatees; no creditor asked that distribution be delayed or a fund set apart to await a future adjudication of his claim; and no refunding bonds were required of the distributees, to whom the balance in the account was awarded. Hence, even if there are unpaid creditors, who hereafter present and prove their claims, they cannot, under our statutes, successfully maintain suits against the distributees or the executors, to obtain a refund of the sums paid by the latter to the former, on the faith of the court's decree, but can only have recovery against assets not appearing in the present account: Sections 49 (b) and 50 (a) and (b), Fiduciaries Act of June 7, 1917, P. L. 447, 515, 516-7.

The basic claim of the executors and residuary legatee being that the award is excessive, by reason of the fact that the court below improperly included, in the total valuation of the estate, certain of the assets left by testator, and mistakenly refused to allow certain credits against that valuation, in the natural order of consideration our first inquiry is: What does the Act of June 20, 1919, P. L. 521, under which the proceedings were had, provide regarding the tax and how it is to be calculated? Section 2 thereof provides, *inter alia*, that "In ascertaining the clear value of such (decedent's) estates, the only deductions to be allowed from the gross value of such estates shall be the debts of the decedent and the expenses of the administration of such estates,

and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or territory." And section 10 says: "The register of wills of the county, in which letters testamentary or of administration were granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed." \* \* \*

It is clear from these sections that the tax is to be levied upon "the clear value" of the entire estate (from which has been excluded, however, real estate located outside of Pennsylvania), after deducting only "the debts of the decedent and the expenses of the administration of such estates." The appraisement to be made is not of the legacies or devises but of the whole estate of a decedent; the debts and expenses of administration are not to be deducted from any particular gift or gifts, but from the whole estate, and the taxes paid to the United States or to any other State or territory, if permitted to be deducted, would have been from the whole estate. We therefore conclude that it is the entire value of the estate, less the credits specified, which forms the basis of the tax, and not the amounts received by the particular legatees; hence, as stated in *Knowlton vs. Moore*, 175 U. S., 41, that which the State "taxes is not the interest to which some person (or many) succeeds on a death, but the interest which ceased by reason of the death." Since this is the true construction of the Act, much of the argument made by these appellants, founded as it is upon the conten-

tion that the tax is levied only upon the particular gifts, when and as received, becomes ineffective because it has no relation to the actual status.

Basing their elaborate argument largely on their erroneous construction of the Act as last stated, the executors and residuary legatee who appeal, ask us to ignore the clear and unambiguous language of section 2, above quoted, and to decide that the court below erred "In ascertaining the clear value" of the estate, because it did not deduct from its "gross value" (a) The amount paid the Government for the Federal Estate Tax; (b) The amounts paid other States and the Province of Quebec for their inheritance taxes on decedent's real and personal property there located; and (c) The inheritance tax payable to this State. *Kirkpatrick's Estate*, 275 Pa., 271, is an express authority against the first of these claims; in principle it also decides the others adversely to these appellants. In deference to the able argument made, however, the supposedly new points presented will be briefly considered aside from that decision.

In support of their contention upon these points, they urge that refusal to allow those items to be deducted "adds the Federal tax, the tax paid to the other States," and that paid to this State, to the total valuation to which the tax rate is applied; this is erroneous, however, it simply refuses to allow those sums to be deducted from the "gross value of such estates" "in ascertaining the clear value" thereof, exactly as does the Federal Estate Tax Act (*New York Trust Co. vs. Eisner*, 256 U. S., 345, 349, 350), and many of the inheritance tax laws of other States. No valid reason is given why this may not be done. On the contrary, as stated in the



last cited case, where "the tax attaches to the estate before distribution,—if it is a tax on the right to transmit, or on the transmission at its beginning—obviously it attaches to the whole estate, except so far as the statute sets a limit."

Recognizing that their contention now being considered is in direct antagonism to the express language of the statute, these appellants in effect ask us to ignore this language, and from isolated phrases and words in the statute to reach an opposite conclusion, partially because of general expressions found in our opinions in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271,—though this question was not directly raised in either of them—apparently forgetting the basic rule that "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated": *Cohens vs. Virginia*, 6 Wheaton, 264, 397, per Marshall, C. J., *O'Malley vs. O'Malley*, 272 Pa., 536. Of course we cannot permit isolated expressions in a statute, or in any opinion of ours, to override the express language of the Act being construed.

It is further urged that there are constitutional objections to the provisions of the statute, if the deduc-

tions above referred to are not made. The only section of the Constitution of this State, which is supposed to affect the matter, is article IX, section 1, which provides that "all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." This, however, is not infringed, since the estates of all decedents are subjected to a uniform inheritance tax in all parts of the Commonwealth; and hence we turn to the provisions of the Federal Constitution, alleged to have been violated by the decree below, to see if they or any of them stand in the way of enforcing the statute as written.

The first claim regarding this is that it is "repugnant to clause 1 of section 8 of Article I of the Constitution of the United States, in that it interferes with the power of Congress to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." This is a veiled attack upon our dual form of government, and, in its ultimate analysis, would appear to be an attempt to deny to the States any right to exercise their taxing power upon subjects which the Federal Government may also tax. It needs no argument to show the error of such a contention. Moreover, there cannot be found anywhere within the four corners of the Act, in the practice under it, or in the decree below, the slightest evidence of a desire to interfere with the taxing powers of the United States.

It is further said that if the taxes paid the Government are not deducted our statute will be "repugnant \* \* \* also to clause 2 of Article VI of the Constitution of the United States, in that it denies that the said Constitution and the laws of the United States made in

pursuance thereof \* \* \* are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." In this day probably no one would deny the supremacy claimed; this court never has. The principle contended for is wholly inapplicable, however. Given the fact, that a State may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plumber vs. Coler*, 175 U. S., 115; *Orr vs. Gilman*, 183 U. S., 278), it necessarily follows that, in determining the way in which this tax shall be computed, it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other States. "The right to dispose of one's property by will, and the right to have it disposed of by the law, after decease, is created by statute, and therefore the State may impose such conditions upon the exercise of this right as it may determine" (*Banker's Trust Co. vs. Blodget*, decided by the Supreme Court of the United States January 22, 1923, and not yet officially reported); hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, "The power of taxation, with its accessorial sanctions, is a power of government, and all property is subject to it." If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her.

It is also contended that the refusal to make these deductions, and the inclusion of the value of the tangible personalty, located elsewhere than in Pennsylvania (which will be further considered hereafter), made the decree below "repugnant \* \* \* also to clause 1 of the 14th Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws." This contention is fully answered by what is said in *Keeney vs. New York*, 222 U. S., 525, 535: "The 14th Amendment does not diminish the taxing power of the State, but only requires that, in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the State of the Power to select the subjects of taxation. \* \* \* There can be no arbitrary or unreasonable discrimination;" but this can only arise (*Dane vs. Jackson*, 256 U. S., 589, 599) where the State tax law "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—to spoliation under the guise of exerting the power of taxation," a situation not alleged to exist under our statute. If, however, we pass to separately consider the two branches of the Amendment, these appellants are not helped.

Upon the question of "due process of law," we have not been favored with a single specification regarding either the Act, or the practice under it. The property being distributed on this proceeding is all in this State; appellants are our citizens and duly appeared and con-

tested the claim of the Commonwealth; all the facts are agreed to; the law applicable thereto has been passed upon by the Orphans' court, all of whose judges are learned in the law, is now under review by this court, and, judging from the record, and the suggestion in the brief, will subsequently be scrutinized by the Supreme Court of the United States. Wherein then have these appellants been deprived of "due process of law?" We agree that "A tax can only be imposed by the State when it has either jurisdiction over a person or jurisdiction over his property;" here it has jurisdiction over both, decedent having been and appellants being domiciled in the State, the latter appearing to the action, all the property now being distributed being within the State, and a valid State statute lawfully imposing the tax. Under such circumstances, it is only when the State does not "provide a fair opportunity for submitting the issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts," that the conclusion reached "is void because in conflict with the due process clause:" *Ohio Valley Water Company vs. Ben Avon Borough*, 253 U. S., 287, 289.

Nor is there any definite allegation as to how the estate is deprived of the equal protection of the laws, though this is asserted over and over again, not only in regard to the refusal to allow the deduction of the items specified, but also, as above stated, in regard to the inclusion of the value of the tangible personal property located outside of Pennsylvania. If the estate has been deprived of the "equal protection of the laws," since all the facts are agreed to, it should be easy to point out exactly how this is so. What has Pennsylvania done

which operates to "deny to any person within its jurisdiction the equal protection of the laws?" These executors and residuary legatees are accorded exactly the same protection given by this statute to every other person within its jurisdiction. Since then "the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied \* \* \* (because) the law operates 'equally and uniformly upon all persons in similar circumstances'": *Billings vs. Illinois*, 188 U. S., 97, 103. It would be of no moment, even if it is the fact, that double taxation may result, so far as regards the tangible personalty located in New York and Massachusetts (*Blackstone vs. Miller*, 188 U. S., 189; *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S., 54), for, if this is the case, every one else in like situation will be doubly taxed.

Two of the contentions made by these appellants are entitled to some further consideration. It is clear that neither testator nor any other decedent can, by his will, alter the amount which the Commonwealth is entitled to receive, save to the extent the statute itself specifies, that is, where the gifts are to a "father, mother husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof \* \* \* or from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow (or) passing from an illegitimate child to his mother" (these being commonly called direct inheritances), but two per centum is to be charged upon the value thereof, and where the gifts are to collaterals,—which include all distributees

except those above specified,—five per centum is to be charged upon the value thereof. It necessarily follows that the direction of the present will, “that all inheritances \* \* \* taxes \* \* \* shall be paid out of the capital of my residuary estate,” can have no effect in reducing the amount of tax to be paid to this State, but only operates, as between the two classes of gifts, to fix the ultimate payment upon the residuary devisees and legatees, in relief of the others, each of whom, but for that clause, would suffer an abatement of his or her devise or bequest, to the extent of the tax imposed upon its value. If this was not so, and a testator was permitted to reduce the amount payable to the State, by simply charging upon the residuary estate all the taxes paid elsewhere, the sovereign power of the State to impose them as it pleases, subject only to the requirement of equality and uniformity, would have to be made subject also, in this class of cases, to the unrestrained directions of a testator. Under such circumstances, a decedent who had a relatively large amount of property elsewhere, might, by the device stated, greatly embarrass and perhaps largely or wholly defeat the claim of the domiciliary State, even upon the value of the personalty within her own borders.

The inequity of this contention is particularly apparent as to the tax of other States on the realty located therein, the value of which is not considered in determining the amount of our inheritance tax. We fully agree with the contention of these appellants that it would be “quite preposterous to say that the State of Pennsylvania has any jurisdiction to impose a tax upon the tax which is paid to the foreign state upon the transfer of foreign real estate.” In the absence of a

statutory provision so authorizing, however, it would be at least equally preposterous to say that a legatee can have deducted from the actual value of the property in our State, which he inherits, the amount he or some one else pays some other State, upon the realty there situated, and pay our tax only on the difference and this, and not the imaginary levying of "a tax upon the tax which is paid to the foreign State," is the actual situation.

As to the inheritance tax paid to this State, we may further say that the Act discloses no trace of a purpose to permit the deduction of the tax itself, in order to determine the valuation upon which the tax is to be levied. On the contrary, section 16 expressly provides that before paying any legacy the "executor or administrator, or other trustee \* \* \* shall deduct (the tax) therefrom at the rate of two per centum upon the whole legacy (if the inheritance is direct) \* \* \* and at the rate of five per centum upon the whole legacy," if the inheritance is collateral. Hence it is palpably erroneous to say that the percentage to be levied on the "clear value of such estate," as calculated in the manner provided by the statute, should not be levied thereon, but on a sum which is that "clear value" less the tax itself; that is, in the case of direct inheritance on 98 per cent. of that value, and in the case of collaterals on 95 per cent. of it. Doubtless the legislature could thus provide, but it has not, and, so far as we are aware, no other legislature ever has pursued that course.

The next contention is that the tangible personal property given to the widow, and also that which was to become part of "The Frick Collection," is not subject



to this tax, because situated in other States than Pennsylvania. Every one concedes those assets cannot be taxed by this Commonwealth; they are incorporated into the great body of property of other States, and, by reason thereof, are necessarily subject only to their tax laws and other statutes: *St. Louis vs. Wiggins Ferry Co.*, 11 Wall, 423; *Leisy vs. Hardin*, 135 U. S., 100; *Pittsburgh & Coal Co. vs. Bates*, 156 U. S., 577. It is sometimes stated in general terms that the reason for this is that the right to tax is based on the protection accorded (*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, 202; *Tappan vs. Merchants' National Bank*, 86 U. S., 490, 501; *Shaffer vs. Howard*, 250 Fed., 873, cited by these appellants) and hence, as the State of the situs is the only one which can give protection to the tangible property there located, it is argued that no other State can tax it, either directly or indirectly. This contention, founded as it is on general expressions only, is, as usually happens in such cases, plainly fallacious. Even the cases cited do not sustain the conclusion sought to be deduced from them. In *Union Refrigerator Transit Co. vs. Kentucky*, *supra*, which is much relied on by these appellants, the court is careful to say that it is only where "the taxing power is in no position to render these services or otherwise to benefit the person or property taxed" that the tax is objectionable. The other authorities are to the same effect. Surely the State-given right of transmission, by which these appellants seek a present award of \$24,704,126.55, may be said "otherwise to benefit" them.

Moreover, it is said in *Southern Pacific Co. vs. Kentucky*, 222 U. S., 63, 76, that "The legality of a tax is not to be measured by the benefit received by the tax-

payer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden obtainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law." So far as we are aware no well considered opinion, certainly none of the cases cited by these appellants, in any way controverts those principles.

Besides, a multitude of authorities state, and these appellants concede, that this is not a tax on the tangible personalty in New York and Massachusetts, but only on the right of transmission given by the laws of this State, where testator and these distributees alike were and are domiciled. This class of taxes, *Union Refrigerator Transit Co. vs. Kentucky*, *supra* (page 211) says "are controlled by different considerations." It follows that as the right of transmission is State-created, and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of decedent's property wherever located. When this right of transmission, coupled with the terms and conditions mentioned, fastens upon property, or becomes the medium by which its ownership or devolution is asserted, those who claim under the statute must do so *cum onere*, that is, must pay a tax, measured in the way stated; and this it has

been clearly held the Commonwealth has a right to require.

This conclusion is foreshadowed, but not expressly decided, in *Keeney vs. New York*, 222 U. S., 525, 539, where the property was in New Jersey at the time the inheritance tax was collectible and the property received by the distributees. In *Maxwell vs. Bugbee*, 250 U. S. 525, however, the question was squarely raised, and it is said at page 539: "It is next contended that the effect of including the property beyond the jurisdiction of the state in measuring the tax amounts to a deprivation of property without due process of law because it in effect taxes property beyond the jurisdiction of the state. It is not to be disputed that, consistently with the Federal Constitution, a state may not tax property beyond its territorial jurisdiction, but the subject matter here regulated is a privilege to succeed to property which is within the jurisdiction of the state. When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed. This principle has been frequently declared by decisions of this court."

There are, moreover, other insurmountable obstacles in the path of these appellants. If it was necessary to obtain the express or implied consent of New York and Massachusetts, before this Commonwealth would be allowed to include, in the total valuation of the estate, the value of this foreign-located tangible personalty (which, of course, it is not), it would not be difficult to show that both were given; the former by the statutes of those States, hereinafter quoted, and the latter in the undisturbed comity existing between the States.

It is said in *Bullen vs. Wisconsin*, 240 U. S., 525: "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, in a practical sense at least, the law of the domicil is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicil, whatever the limitations of power over the specific chattels may be." To some degree, of course, the rule of comity may be modified by the laws of the State where such personalty is located (see cases cited in *New Orleans vs. Stempel*, 175 U. S., 309, 313); but there is nothing appearing in the legislation of either New York or Massachusetts denying or qualifying the right claimed by this Commonwealth. True, there are provisions in their laws which differ from ours; notably those exempting charities from even this species of taxation, and limiting the proportion of the estate which a testator may give to charity. These relate, however, only to wills of testators there domiciled; the applicable statutory provisions regarding estates of non-resident decedents (showing also, if this is needed, the express consent of those States to the proceedings here), being as follows:

New York: "The validity and effect of a testamentary disposition of real property, situated within the State, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of

such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death."

Massachusetts: Chapter 199, Section 1. "If administration is taken in this Commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of the state or country of which he was an inhabitant."

Chapter 65, section 5. "Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

We agree, therefore, with counsel for the Commonwealth, that under the circumstances stated "it is mere metaphysics to argue whether the transfer (of the tangible personality under consideration) is effected by virtue of the law of the situs or the law of the domicile; the fact is that tangible personal property passes according to, and in the manner provided by the law of the domicile." We are clear, also, that there is no legal ob-

jection to including the value of the tangible personal property located in New York and Massachusetts; and this conclusion would probably be inevitable also (even if there was no comity existing between those States and ours, and no statutes of theirs on the subject), because of the admitted facts that all of the assets presently being distributed, and now claimed by these appellants, are located in Pennsylvania, and the will of testator, through which their right is derived, requires the tax to be paid out of them. For the reasons stated, no claim to these assets can successfully be made, save upon compliance with our statute requiring the payment of an inheritance tax on the value of all the tangible property there located, as well as on the value of the real and personal property in this State.

The principles stated answer also the contention that the tax cannot be assessed at this time, nor any interest charged, because some disputed and contingent claims have not been paid, and hence, it is not yet known what amount should be deducted for them and for administration expenses in adjusting them. If, however, the Act of 1919, provides that this character of tax shall fall due at a given time after a decedent's death, it must then be paid; and if it fixes a date from which interest shall run, it will begin to run from that date. It is erroneous to assert that interest upon a liability never begins to run until the principal is payable; this is so only when no provision is made on the subject; *Morris vs. Ellwood*, 275 Pa., 319. Many notes, to be paid in the future, carry "interest from date;" and this may always be provided for by contracting parties, and by statute in cases within the State's power to levy and collect. It is only necessary, therefore, to see what the Act of 1919

says as to the time the tax shall become due and payable, and from what date interest shall run, remembering always that the tax is on the estate in its entirety, and not on each devise and bequest, when and as payable, as these appellants erroneously contend.

It must be admitted the Act might have made clearer the answer as to the time when the tax is due, but enough appears to show the legislative intention. Section 14, which relates to the property of resident decedents, provides that "Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same." Section 29 says that "Whenever any tax imposed by this Act upon the transfer of property of a non-resident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same" or may sue to recover it in "any court of this Commonwealth or elsewhere." And section 38, which relates to both resident and non-resident decedents, provides that "If the tax is paid within three months after the death of the decedent, a discount of five per cent will be allowed. If the tax is not paid at the end of one year from the death, interest shall be charged at the rate of twelve per centum per annum on such tax." \* \* \*

The last sentence above, fixes the fact that interest begins to run at the end of the year; and all the provisions quoted, when considered together, may fairly be construed to mean that the tax is due and payable not later than the end of the year, which time had expired

before the award appealed from was made. The court below did not err, therefore, in directing the payment of the tax on the instant distribution, the assets in which, as well as those not included in the present account, but nevertheless included in the tax valuation, belonging alike to these appellants, who are, by this distribution, awarded a large part of the estate. It may be well to add that sections 20 and 40 of the Act provide an adequate remedy for recovering back any excess payment made to appear by reason of later developments in the estate.

By the Act of July 9, 1919, P. L. 794, it is provided as follows: "All estates in any building, ground, books, curios, pictures, statuary, or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." No other statute grants exemption from inheritance taxes. By virtue of the provision quoted, the Commonwealth concedes that the value of the land given to the city of Pittsburgh for a public park should be deducted from the "clear value of the estate," in determining the amount upon which the tax should be assessed, but claims that the \$2,000,000 bequeathed for the purpose of keeping the park in order, should not be deducted. The court below erroneously decided otherwise, stating as its reasons that the legacy was given "for the purpose of completing the gift of the land, to effectuate the purpose of the testator," and was no "more than will be



reasonably required to maintain and embellish said land for park purposes."

It will be noticed, however, that the statute nowhere refers to money gifts, but expressly states what subjects shall be exempted from the payment of the tax. It does not say "all estates \* \* \* given for the sole use of the public," but that "all estates in any building, ground, books, curios, pictures, statuary or other works of art," given for such use, shall be exempted, and by no process of reasoning can a money gift be held to come within any of these classes. It follows, therefore, that the \$2,000,000 should not have been deducted in fixing the amount upon which the tax is levied; not only because provisions exempting property from taxation must be strictly construed (*Bank of Commerce vs. Tennessee*, 104 U. S., 493; *Comm. vs. Northern Electric L. & P. Co.*, 143 Pa., 105, 109), but also because the expression of the particular things which shall be exempted, excludes all other subjects: *expressio unius est exclusio alterius*.

Among other personalty owned by testator, located in his dwelling house in New York City, were a Louis XV. Tulip Rosewood Library Table, which was appraised at \$5,500, and a 16th Century French Walnut Cabinet, appraised at \$35,000. The Commonwealth claims that they are "antique \* \* \* furniture," within the meaning of those words in the foregoing quotation from testator's will, and hence were included in the gift to the trustees for the benefit of The Frick Collection, and upon their appraised value a tax of five per cent. should be assessed, although that corporation refused to receive them because they were given by the will to the widow, who, under the decree below, pays a

tax at the rate of two per cent. only. The court below overruled this claim because of an agreement of all the parties interested, including the Commonwealth, that these and the other articles of furniture in testator's New York home were "nothing more than the ordinary furniture and furnishings suitable for such residence." Since that which is "nothing more than ordinary furniture" and "antique \* \* \* furniture" are not or may not be the same, and there is no evidence compelling the conclusion that they are not, we cannot convict the court of error in holding they are not "antique \* \* \* furniture" within the meaning of the will. Moreover, the refusal of "The Frick Collection" to receive them as "antique \* \* \* furniture" necessarily resulted, if they were such, in their falling into the residue, upon which the tax imposed on their value would have been at the rate of two per cent., exactly as it was charged in the decree appealed from.

There is one other matter, not referred to in the assignments of error, but to which our attention is specifically called by a stipulation between the Commonwealth and the parties interested under the will. It appears that testator had purchased what are known as the Fragonard Panels, which were appraised at the value of \$750,000, and the Boucher Panels, which were appraised at the sum of \$150,000; and had "reconstructed the rooms, in which his art collection was to be exhibited, so as to contain said panels, and they were placed therein and are now there, being applied to the walls of the rooms." Whether or not the result of this was to make them a part of the realty, under the laws of New York, we do not know, except as we may infer the negative, since apparently their value was included in

fixing the amount upon which the tax was assessed, and no assignment of error objects to this. Because of the doubt on the subject, however, and of testator's very generous disposition of his property, for the benefit of the public generally, the order we enter will be without prejudice to the rights of the parties in interest to make application to the court below for a reopening of the decree, and a determination of this question, notwithstanding our general conclusion as to the proper inclusion of the value of the personal property directed to be conveyed to "The Frick Collection."

The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals [without prejudice, however, to the rights of the parties in interest to apply for a reopening of the decree, so far as it includes the value of the Fragonard Panels and the Boucher Panels, in determining the amount of the tax]; the costs on all the appeals to be paid by the estate.

Frazer, J. files a dissenting opinion.

Subsequently, on June 23, 1923, on motion of appellants, the Supreme Court modified the judgment in these cases, by eliminating the portion enclosed in brackets, making it read as follows:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the City of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."

the following: (1) the physician's duty to his patient; (2) the physician's duty to his fellow physicians; (3) the physician's duty to his community; (4) the physician's duty to his profession; (5) the physician's duty to his country.

The first of these duties is the physician's duty to his patient. This duty is the foundation of the physician's ethical obligations. It is the duty of the physician to do no harm to his patient, to relieve his suffering, and to promote his health.

The second of these duties is the physician's duty to his fellow physicians. This duty is the foundation of the physician's professional obligations. It is the duty of the physician to cooperate with his fellow physicians, to respect their autonomy, and to maintain the integrity of the profession.

The third of these duties is the physician's duty to his community. This duty is the foundation of the physician's social obligations. It is the duty of the physician to promote the health and well-being of his community, to prevent disease, and to provide care for the underserved.

The fourth of these duties is the physician's duty to his profession. This duty is the foundation of the physician's ethical obligations. It is the duty of the physician to maintain the highest standards of medical practice, to uphold the Hippocratic Oath, and to protect the public interest.

The fifth of these duties is the physician's duty to his country. This duty is the foundation of the physician's patriotic obligations. It is the duty of the physician to serve his country, to protect its interests, and to promote its well-being.

These five duties are the foundation of the physician's ethical obligations. They are the duties that guide the physician in his daily practice and that define his role in society.

The physician's duty to his patient is the most important of these duties. It is the duty that gives the physician his purpose and meaning. It is the duty that makes the physician's work a noble and honorable profession.

The physician's duty to his fellow physicians is the second most important of these duties. It is the duty that makes the physician's work a team effort. It is the duty that makes the physician's work a shared responsibility.

The physician's duty to his community is the third most important of these duties. It is the duty that makes the physician's work a social service. It is the duty that makes the physician's work a contribution to the well-being of his community.

The physician's duty to his profession is the fourth most important of these duties. It is the duty that makes the physician's work a noble and honorable profession. It is the duty that makes the physician's work a source of pride and honor.

The physician's duty to his country is the fifth most important of these duties. It is the duty that makes the physician's work a patriotic service. It is the duty that makes the physician's work a contribution to the well-being of his country.

These five duties are the foundation of the physician's ethical obligations. They are the duties that guide the physician in his daily practice and that define his role in society.

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The physician's duty to his country is the fifth most important of these duties. It is the duty that makes the physician's work a patriotic service. It is the duty that makes the physician's work a contribution to the well-being of his country.

**Dissenting Opinion in the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
Western District.

IN RE  
ESTATE OF HENRY C. FRICK,  
deceased.  
APPEAL OF  
COMMONWEALTH OF PENN-  
SYLVANIA, *et al.*

Nos. 39, 40, 42, 43, 44  
and 45, October Term,  
1923.  
Appeal from the O. C. of  
Allegheny County.  
Filed April 30, 1923.

DISSENTING OPINION.

FRAZER, J.:

A question is raised in this proceeding as to the right of the state to tax that part of decedent's property paid to the United States government in the form of an estate tax. There can be no doubt as to the meaning of the Act of 1919. The legislature plainly intended, by Section 2, to prevent the deduction of such tax before assessing the state transfer tax. The statute was passed to overcome the decisions of this court in *Otto's Estate*, 257 Pa., 155 and *Knight's Estate*, 261 Pa., 537, wherein we held that, in computing the net value of the estate, taxes due the federal governments and foreign states should be deducted. The Act of 1919, on the point here involved, was construed by this Court in *Kirkpatrick's Estate*, 275 Pa., 271. The writer dissented from the conclusion reached in that case by the majority of the Court, but filed no opinion setting out

his reasons for such dissent. In view of the presentation of the same question in this proceeding, and of the further fact that this case will probably be taken before the Supreme Court of the United States, it seems proper that reasons for such dissent be briefly stated.

The power of the United States to tax is limited only by the extent of the necessity for raising money to meet the various needs of government. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." *McCullough vs. Maryland*, 17 U. S., 315, 429. The opinion in which this language was used firmly established the principle that a state is without power to tax an instrumentality of the Federal Government—a principle which has been constantly followed and applied in the century elapsed since the decision there rendered. The general rule is, therefore, that states are without authority, by taxation or otherwise, to in any manner control or interfere with the operations of the Federal Government, or the instrumentalities by which that government is carried on. The latter is supreme within its sphere of action, and, where there is inconsistency or conflict, the state laws and regulations must yield for the benefit of the whole. If the State of Pennsylvania is permitted to tax property appropriated by the Federal Government under its taxing power this, in effect, permits the state to collect revenue from property set aside for the use of the United

States. If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States. The federal tax is an estate tax payable out of the estate of decedent and is imposed, regardless of the will of the decedent, on the gross estate, after deducting designated items: *Knight's Estate, supra*. The right of the United States to first collect its tax seems to be conceded and if the right of the United States to tax includes the right to tax to any amount, or to take the whole where necessary, the result of holding that the federal tax should not be deducted before computing the state tax might be to impose a combined state and federal tax exceeding the value of the property. Let us suppose, for example, that the federal tax is sixty per cent. of the estate and the state tax an equal amount. The result would be that the estate would owe in taxes twenty per cent. more than its value, regardless of what that might be. While it may be argued that this situation would not be likely to arise, and indeed presents a very remote possibility, yet it shows the logical result of permitting two or more sovereign powers to levy a tax on the whole of a decedent's estate. The fact that the right of succession is a state right and not within the control of the federal government does not give to the state the power to take away from the federal government the subject matter of the tax, as was suggested in the opinion of the majority of this

court in *Kirkpatrick's Estate*, *supra*, inasmuch as, under the federal law, the tax is on the estate as a whole and not on the transfer to the beneficiary and the justification for the tax is the ending of the estate by death rather than the beginning of a new estate by succession: *Knowlton vs. Moore*, 178 U. S., 41.

The majority opinion holds exempt the land given to the City of Pittsburgh as a public park but imposes a tax of 5 per cent. on the fund of \$2,000,00 given for the purpose of taking care of the property. It is conceded the sum so given is not in excess of the amount necessary to properly improve and maintain the park and that, in absence of such gift, the city would be obliged to tax its citizens to provide for such maintenance. It is true the Act of 1919 refers in its exemptions only to "estates in any buildings, ground, books, curios, pictures, statuary or other works of art" given for public purposes and does not specifically mention funds left for maintenance of such objects. Any distinction between the gift of land for a park and the gift of a sum of money for its maintenance or for the purchase of property to be used as a park, is but an arbitrary one and not based on a real difference in the purposes or object of the gift. Granting the power of the legislature to make an arbitrary distinction if it sees fit to do so, the question is whether this has been done in the Act of 1919.

If the statute in question is to be construed strictly, then the majority opinion of the court is undoubtedly right. The argument for such strict construction, however, is based on prior decisions rendered in cases involving, not the question of exemption of public property, but exemption of private property held for charit-



able or other purposes, bringing it within the laws providing for exemption from taxation. There is a clear distinction in the law applicable to these two classes of cases. Public property is never subject to tax laws and no portion of it can be without express statutory enactment. Accordingly, no exemption is needed for public property held as such: *Poor Directors vs. School Directors*, 42 Pa., 21; *Pittsburgh vs. Sterrett Sub-District School*, 204 Pa., 635, 641. Exemption is the rule and taxation the exception. In considering legislation of the character here in question, it is always to be presumed that general language is used with reference to taxable subjects, and the property of municipalities does not fall within the ordinary designation of taxable subjects: *County of Erie vs. City of Erie*, 113 Pa., 360. To levy a tax on such property would merely mean the assessment of new taxes to meet the liability which the city had imposed upon itself and no benefit would accrue. On the contrary, an additional liability would result, measured by the expenses of imposing and collecting the tax. For this reason, it is not reasonable to conclude that a law, however general, was intended to reach property held by the public for public purposes. While such property may be taxed if the legislature sees fit to provide, the intention must be clearly expressed or necessarily implied. On the other hand, as to private property, even though held for private charities and therefore exempt as such, a different rule applies. In such case liability to taxation is the rule and the person claiming exemption must point to an express statute granting relief from the burden. An illustration of this

is found in *Robb vs. Philadelphia*, 25 Pa. Superior Ct., 343, which followed the general principles established many years ago by this court. In the course of the opinion in the case just cited, it was said (Page 346): "There is this distinction for the purpose of taxation between property owned by a church and that owned by a municipality and devoted exclusively to public purposes. The church must show ground on which its property is exempt. The public property of a municipality cannot be taxed unless there is the clearly manifest legislative intention that it shall be subject to the imposition. Property belonging to the state and its municipalities, and which is held for governmental purposes, is presumed to be exempt, and is not included in any designation of property to be taxed however sweeping, unless the statute authorizing the tax expressly provides." Citing *Pittsburgh vs. Sterrett Sub-District School*, *supra*, wherein appears an elaborate review of the authorities of our own and sister states.

It is also to be noted, as having an important bearing on this question, that the settled policy of the state is to exempt from taxation "institutions of purely public charities," and that they "may be exempt by necessary implication of law;" *Mattern vs. Canevin*, 213 Pa., 588, 589-90, construing Art. IX, Sec. 1, Constitution of Pennsylvania.

Applying the foregoing principles to the present case, it seems a narrow construction of the act in question to exempt existing physical things devised for public purposes, such as buildings, ground, books, curios, works of art, etc., and to refuse to exempt a monetary gift made either for the purpose of purchasing such

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objects or maintaining those already in existence. The purpose and spirit of the law applies to the money equally with the objects enumerated. Bearing in mind the principles above stated, showing the policy of our law, it seems to the writer of this opinion that the Act of 1919 should be construed to include money left by will to maintain the charitable objects there exempt.

Entertaining these views on the questions briefly stated above, the writer enters his dissent from the opinion of the majority.

The first of these is the fact that the American Medical Association is a voluntary association of physicians. It is not a government agency, nor is it a part of the government. It is a private organization, and its members are free to join or leave it at will. This is one of the reasons why the American Medical Association is able to maintain its independence and to resist the pressure of government intervention in the medical profession.

The second reason is the fact that the American Medical Association is a national organization. It is not a local or state organization, and it is not a regional organization. It is a national organization, and its members are free to join or leave it at will. This is one of the reasons why the American Medical Association is able to maintain its independence and to resist the pressure of government intervention in the medical profession.

The third reason is the fact that the American Medical Association is a professional organization. It is not a business organization, nor is it a political organization. It is a professional organization, and its members are free to join or leave it at will. This is one of the reasons why the American Medical Association is able to maintain its independence and to resist the pressure of government intervention in the medical profession.

The fourth reason is the fact that the American Medical Association is a learned society. It is not a trade organization, nor is it a social organization. It is a learned society, and its members are free to join or leave it at will. This is one of the reasons why the American Medical Association is able to maintain its independence and to resist the pressure of government intervention in the medical profession.

## **BRIEF IN SUPPORT OF PETITION.**

Mr. Frick was born in the State of Pennsylvania, and Pittsburgh was his domicile. His estate at the time of his death amounted approximately to one hundred million dollars. By his will he left about three-fourths of his entire estate to charity—to hospitals, to universities, to the creation and endowment of a great park in Pittsburgh, and to the incorporation of a wonderful art institute in New York City, which should be forever free to all people, and to which he gave his New York residence, appraised at over \$3,000,000, his art collection, inventoried at over \$13,000,000, and an endowment fund of \$15,000,000.

In Mr. Frick's will he provided that all inheritance taxes should be paid out of his residuary estate. He bequeathed 87 per cent. of the residuary estate to hospitals and colleges and 13 per cent. to his daughter.

When Mr. Frick died he owned property, real and personal—some tangible, some intangible—in eighteen states and in the Dominion of Canada.

At once the United States and these nineteen other sovereignties stretched out their hands for money, and all sought to exact as taxes the last penny possible from the money which Mr. Frick had left to these charities. The estate has settled (sometimes by compromise, sometimes by litigation) with all these sovereignties except the United States and State of Pennsylvania. The executors paid the United States \$6,338,898.68, which they admitted to be due to it, and to the State

of Pennsylvania \$1,978,949.71, which they admitted was due to it. The United States claims a further sum approximating \$3,000,000, which is still under discussion with the Department of Internal Revenue. A part of this is directly involved in this case and awaits its decision, since one of the vagaries of the United States inheritance tax law, as it is administered, is that, in cases where the taxes are thrown upon residuary estates which are bequeathed to charity, the more tax you pay to the several states the more tax you have to pay also to the United States. The State of Pennsylvania claims additional estate tax to the amount of \$1,185,158.14, with interest from December 2, 1920. The Pennsylvania court of last resort has decided that this amount is due. To review this decision a writ of error has been sued out; and it is to review this decision also (in case a writ of error is not the proper remedy) that a *certiorari* is now prayed for.

The petitioners believe that this additional tax should not be paid, because the Pennsylvania Transfer Inheritance Tax Act as construed by the court violates the Constitution of the United States.

The broad question involved is one of jurisdiction or power. The petitioners contend (1) that Pennsylvania cannot levy a transfer inheritance tax on tangible articles of personal property which are located in other states; (2) that in ascertaining the taxable value of the estate which is subject to inheritance taxes in the state of Mr. Frick's domicile, the "paramount" taxes which have to be paid to the United States and to other states must be deducted—in this case the United States estate tax and the estate or succession

taxes levied by states other than Pennsylvania on the transfer of shares of capital stock of corporations of other states than Pennsylvania; (3) that in this case, where all inheritance taxes are cast by the terms of the will on the residuary estate, before the tax is calculated a deduction from the estimated value of the estate must be made of the inheritance taxes paid to other states on real estate located in said states and of the inheritance tax paid to the State of Pennsylvania on the general and specific legacies and devises.

After the opinion in this case was handed down by the Supreme Court of Pennsylvania, deciding these questions against your petitioners, an application was made to that Court for the allowance of a writ of error. The petition was accompanied by a petition for a modification of the decree and, as required by the rules of the Pennsylvania Supreme Court, by a petition for a re-argument of the case. On the 23rd day of June 1923, the Court entered an order amending its prior decree, and made an order dismissing the petition for a re-hearing and also made an order allowing a writ of error from the Supreme Court of the United States. Subsequently the writ of error was formally allowed by the Chief Justice of the Supreme Court of Pennsylvania, a supersedeas bond approved by him, and the writ of error was sued out and filed in this Court at this number and term. There are four appeals from this decision of the Supreme Court of Pennsylvania pending in this court. A stipulation has been filed in this case that this application for *certiorari* may be determined on the record at No. 442 October Term of this Court, and a certified copy of the record has been filed in each case.

In the judgment of petitioners' counsel, this case falls within the class of cases reviewable by a writ of error.

The provision of the Pennsylvania statute imposing a tax on foreign tangibles is this:

"A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situate within this Commonwealth or elsewhere." (Act approved June 20, 1919, Article I, Section 1, P. L. 521, West Publishing Company's Compilation of Pennsylvania Statutes, Section 20465).

The provision of the Pennsylvania inheritance transfer tax act which relates to the tax upon the paramount taxes is:

"In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." (Act, approved June 20, 1919, Article I, Section 2, P. L., p. 522; West Publishing Company's Compilation of Pennsylvania Statutes, Section 20466.)



The petitioners' contention in the case is that this statute violates their rights under the constitution and laws of the United States.

It is submitted that under the decisions of this Court this case is reviewable by a writ of error, which was properly granted. *Dahnke-Walker Milling Co. vs. Bondurant*, 257 U. S., 282; *Eureka Pipe Line Co. vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277.

The facts are entirely different from the facts in *Dana vs. Dana*, 250 U. S., 220, a case for which this court held *certiorari* to be the correct remedy. In the *Dana* case the writ of error was dismissed because neither the validity of the statute nor the validity of any authority exercised under the state was drawn in question. The court below, the Supreme Judicial Court of Massachusetts, had decided the case on the view which it took of the question whether the property sought to be taxed was real estate or personal property. This court, therefore, held that the Federal question could be raised only on *certiorari*.

Inasmuch, however, as the opinion of counsel may be erroneous on the question of which remedy is the proper one in this case, a petition for a *certiorari* also has been filed.

This brief is filed for the purpose of showing the court that there are Federal questions of public and general importance involved in the case which have never been decided by this court and on which there are conflicting decisions by State Courts.

### **POINT I.**

#### **The Legislature of Pennsylvania Has No Power to Tax the Transfer of Tangible Chattels Situate Beyond Its Boundaries.**

The State of Pennsylvania has, by act of Assembly, undertaken to tax all property of a resident decedent, real and personal, wherever situated.

A transfer inheritance tax amounting to more than \$600,000 has been levied on tangible chattels which belonged to Mr. Frick at the time of his death, and were then located in New York and Massachusetts.

These tangibles consisted of (a) the art collection, valued at more than \$13,000,000 and located in Mr. Frick's house on Fifth avenue in New York City; (b) furniture, household supplies, etc., located in said house; (c) pictures, furniture and furnishings—live-stock, agricultural implements, etc., located at his estate and summer home at Pride's Crossing, Massachusetts.

So far as the Massachusetts tangibles are concerned upon which the State of Pennsylvania has levied a transfer inheritance tax based on a valuation of \$318,429.25, it has been stipulated that they "consisted of nothing more than the ordinary furniture and furnishings suitable for such residences and estates."

The art collection had an inventoried value of \$13,132,391, and upon this the State of Pennsylvania levied a 5 per cent. tax. This art collection, owned by Mr. Frick at the time of his death, consisted of a great many art treasures, mostly antiques of European and Asiatic origin—paintings, rugs, furniture, bronzes, porcelains, etc. Some of the articles, such as panel pictures, were of so unusual a character as to require special rooms to be constructed to hold them. The panel pictures were applied to the walls.

The art collection was at the time of Mr. Frick's death located in the City of New York in the building occupied by him at that time as one of his residences. The building was completed and first occupied by Mr. Frick in 1914, and in 1915 Mr. Frick made his will, in which he made provision for carrying out his intent that the building and its contents should become a permanent public gallery of art to which the public should "forever have access." Subject to the right of Mrs. Frick to occupy the land and building as one of her residences so long as she desired to do so, the land was devised to a corporation to be incorporated by the State of New York, and to be known as "The Frick Collection." Mr. Frick by his will bequeathed all the works of art constituting the collection to this corporation. He provided in his will and made it a condition of the bequest that these chattels should be forever held, maintained and preserved in this house. He bequeathed to the corporation \$15,000,000 also as an endowment fund.

There is no room for fictions or theories as to what the *situs* of these chattels was and is. Every one of

the articles which constitute this collection has a real physical existence and necessarily has a *situs* as surely as the building has. Indeed by the terms of Mr. Frick's will the articles never can be removed to any other *situs*.

In considering a question of this kind, one must bear in mind that where tangible chattels are located in a sovereignty other than that of the decedent's domicile, they must be administered by an ancillary administrator or executor of the country of their *situs*, and that not only have the local creditors the right to be first paid before anything is transmitted to the state of the domicile, but resident specific legatees, and in some instances even general legatees residing in the country where the chattels are, have the right to have their legacies paid before the balance is remitted to the principal administrator.

*Harvey vs. Richards*, 1 Mason, 381.

In this case Mr. Justice Story says that unquestionably the specific legatee is entitled to claim in the jurisdiction where the chattel is, although there be only an ancillary administrator there. So it is perfectly clear in this case that the courts of New York will see to it that this legacy to the Frick Collection is kept in the State of New York. It is the duty of the corporation, the Frick Collection, also, to see that these chattels remain in New York and are distributed to it. And the State of Pennsylvania has no way by which it could get this collection into the State of Pennsylvania and administer it there.

The law of England is the same.

*In re Lorillard, Griffiths vs. Catforth* (1922),  
2 Ch., 638.

The testator, who was domiciled in New York, left assets in England, where there was an ancillary administration. The legatees under the will resided in England, and upon claim being made by the principal administrator in New York that the assets after payment of the British debts should be remitted to him, the application was denied by the English Court of Chancery, which held that the resident beneficiaries under the will had the right to have the balance in the hands of the ancillary administrator distributed to them. Lord Justice Warrington says:

"The persons entitled to the unadministered residue are in this country, and the Court will not order these moneys to be sent to an administrator abroad."

The proposition contended for by petitioners is that the State of Pennsylvania cannot impose an inheritance tax upon the transfer of Mr. Frick's tangible personal property, tangible chattels which were outside the State of Pennsylvania, and which, consequently, were not situated in the State of Pennsylvania. The obligation imposed upon a state by the Fourteenth Amendment to the Constitution of the United States requires that the subject-matter of the state's action shall be within the jurisdiction of the state, that is, within its territory. This proposition is so thoroughly established that a justification of the tax imposed by

the State of Pennsylvania in the instant case must be founded either (a) upon the fiction expressed by the words "*mobilia sequuntur personam*"; or (b) upon the proposition that the title to decedent's tangible property outside of the state passes by virtue of the laws of the state of the domicile, and that, therefore, both the state of the domicile and the state of the *situs* can tax; or (c) that because there is money being distributed by the Pennsylvania courts to beneficiaries who must come into Pennsylvania to get their share in the distribution, the State of Pennsylvania can impose a tax upon the property in Pennsylvania and determine the amount of the gross value of the estate by adding to it the property outside the state, which it cannot tax.

(a) In view of the decisions of this court and of the Supreme Court of Pennsylvania, it could not be successfully contended that the fiction *mobilia sequuntur personam* authorizes the tax, because, under the decisions of the court the fiction must yield to the facts. (*Eidman vs. Martinez*, 184 U. S., 578—see opinion of Mr. Justice Brown, pages 581-582; *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194—see opinion by Mr. Justice Brown, page 206; *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S., 395—see opinion by Mr. Justice Moody, page 402.)

The Supreme Court of Pennsylvania did not attempt to sustain this contention.

(b) The second proposition, that the power of the state to tax could be sustained because the succession to articles of personal property passes under the laws of the state of the domicile, is, we submit, unsound.

While the Supreme Court of Pennsylvania discusses this point, it does not base its decision upon it.

*Tangible* personal property is subject to the dominion of the sovereignty where it is situated. The question who is to be recognized as its owner during the life of the owner is a question solely for the sovereignty where the property is located. To whom the title passes when its owner dies is determined by the law of that sovereignty alone, and does not depend in any degree whatsoever upon the law of any other sovereignty. The question in this case is the validity of Mr. Frick's will in New York and Massachusetts. Is his will valid under the laws of those states? There must be a compliance with the laws of those states before the will will pass title to tangible property in those states. This is true, even though the laws of those states say that the will of a non-resident *executed* in the manner required by the state of his domicile is valid in New York and Massachusetts.

In *Keeney vs. New York*, 222 U. S., 525, Mr. Justice Lamar says (page 537) :

"The real estate and tangible property in Texas were not within the taxing jurisdiction of the State of New York and there was no effort to tax the transfer of that property."

While this statement of Mr. Justice Lamar's is only an expression of his opinion and was not necessary to the decision of the case, it is an expression of opinion in the only case, we believe, that ever reached this court in which there was any question as to the power of

the state of the domicile to levy an inheritance tax upon tangible chattels located in another state.

The Pennsylvania Supreme Court, in its discussion of this point in its opinion, seems to imply that *Bullen vs. Wisconsin*, 240 U. S., 625, is an authority for the proposition that the State of Pennsylvania could impose this tax upon these tangible chattels. In *Bullen vs. Wisconsin*, however, the property consisted entirely of *intangible* property; and when Mr. Justice Holmes in his opinion speaks of the law of the domicile as being needed to establish the inheritance, he is speaking of *intangible* articles of personal property, and is referring to the cases of "contracts and stock" as illustrative of the point.

There are two decisions of state courts of last resort in which it was expressly held that inheritance taxes can not be imposed by the state of the domicile of the decedent upon tangible chattels situate in another state.

In *Weaver's Estate*, 110 Iowa, 328, it was held that an inheritance tax could not be imposed by the State of Iowa upon a herd of cattle which was in Missouri.

In *State vs. Brevard*, 62 North Carolina, 141, the testator was domiciled in North Carolina but owned property, consisting of realty and personalty, in the State of Alabama. Among his property in Alabama was the Vesuvius Furnace with all its appurtenances, which doubtless included some personal tangibles, but which the report of the case expressly shows



included a number of negro slaves. It was held that this tangible property could not be taxed for inheritance tax purposes in North Carolina, the state of the domicile. The opinion is based upon the reasoning in the very exhaustive opinion of the court in the earlier case of *Alvany vs. Powell*, 55 North Carolina, 51.

The same principle is laid down in *Josylin's Estate*, 76 Vermont, 88. In that case the court held that the State of Vermont could not levy an inheritance tax upon an indebtedness due to a resident decedent from a non-resident, because the real *situs* of the thing was the state of the debtor, and the debt could only be collected by means of the laws of that state. Judge Stafford says (page 92) :

"\* \* \* this portion of the estate did not pass by force of our law at all, for that law had no force in the domicile of the debtors. It passed by force and virtue of the law of those jurisdictions. If they recognize our law as the rule to be followed in distributing the personal estate, just as they would have recognized the law of the place where a contract was made as the law of the contract, that did not make it that the property passed by force of the law of this state, but only that it passed in the same manner as it would have passed by our law."

And again at the bottom of page 93:

"The hand that passes the estate from one generation to another retains a portion as a sort of toll for the service. Which sovereignty is that? Clearly the one which has the right to say who shall succeed."

The only case cited by the State of Pennsylvania, in which a court of last resort has decided that a state may levy an inheritance tax upon tangible articles outside its boundary is *Matter of Estate of Swift*, 137 N. Y., 77 (1893). This is a very curious case; for the only opinion filed is an opinion written by Mr. Justice Gray to sustain the proposition that the tax was invalid. But he says at the end of his opinion that his brethren do not agree with him, and that therefore the decision of the court below is affirmed. So the case is of very little authority. All that we know about it is that the judges of the Court of Appeals of the State of New York decided that the tax was valid, but gave no reason whatever for their decision; while the only opinion filed does demonstrate quite conclusively that such articles are not taxable.

While it was claimed by the respondent's counsel in their brief before the Supreme Court of Pennsylvania that there were two other cases (*Carpenter vs. Pennsylvania*, 17 Howard, 456, and *Hartman's Estate*, 70 N. J. Eq., 664), in which state inheritance taxes upon tangible chattels located outside of the state had been sustained by the courts, an examination of the cases themselves shows that they do not support the contention of the respondent.

In the report of the case of *Carpenter vs. Pennsylvania*, 17 Howard, 456, the only reference to what the personal property was is a statement of Mr. Justice Campbell, made in delivering the opinion of this court, on page 461, which is as follows:

"In that settlement the executor represented

that a portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth \* \* \*."

There surely is nothing here to show that any of the property involved was *tangible* personal property. The case was an appeal from a decision of the Pennsylvania Supreme Court in *Short's Estate*, 16 Pa. St. Reports, 63. The statement of facts in the report of that case on page 63 states explicitly that decedent "owned a large amount invested in stock and corporations in other states, some bonds of the State of Kentucky, etc., in all exceeding half a million of dollars, and above \$1000 of cash in a bank in New York." This certainly discloses no *tangible* chattels located outside of the state. The case is therefore not authoritative for the point on which it is cited; particularly in view of the fact that there is not even any discussion in the opinion of either the Supreme Court of Pennsylvania or the Supreme Court of the United States with reference to the point involved in the instant case.

In *Hartman's Estate*, 70 N. J. Eq., 664, the only point discussed or involved in the decision was whether Mrs. Hartman was a citizen of New York or of New Jersey. It was held that she was a citizen of New Jersey, and that therefore New Jersey could tax on the theory of that being her domicile. There is nothing in the report of the case to indicate that there was any tangible personal property belonging to her located in New York, except that, as she is said to have owned a residence in New York in which she lived, one might perhaps infer that there was furniture in the house, and also infer

that the furniture was assessed for inheritance tax purposes. Likewise there is some reference to her having taken her horses and carriages to Long Branch in the State of New Jersey in the summer, but there is nothing to show whether she kept them in New York City or elsewhere in the winter. It is perfectly clear that there is nothing in the case to show that New Jersey did tax these New York tangibles; and it is also clear that no question was raised by counsel or considered by the court as to whether such tangibles, if they were assessed, were or were not taxable. The sole question, as we have stated above, discussed and decided by the New Jersey Court was whether her domicile was in New Jersey or in New York.

It is a general fundamental proposition, frequently laid down by this court, that the power to tax is correlative with the power to protect; that where a thing is situate outside the territory of the state, the sovereign has no power to protect and cannot tax it.

See *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, particularly Mr. Justice Brown's opinion, beginning at page 202.

*Tappan vs. Merchants National Bank*, 86 U. S., 490, particularly Mr. Chief Justice Waite's opinion at page 501.

These chattels located in the State of New York were entirely outside of the State of Pennsylvania and beyond its power to protect. How they should be dis-

posed of, as well as how they should be protected, was entirely within the jurisdiction of New York.

(c) The decision of the Supreme Court of Pennsylvania is founded upon the third proposition, which is:

That because the property which is being distributed in this proceeding is all in this state, there can be no Federal question involved. The proposition is thus stated by Mr. Justice Simpson (page 36, this book):

"It follows that as the right of transmission is State-created and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive, property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of the decedent's property wherever located."

Under this rule the State of Pennsylvania can levy upon the property which is within her jurisdiction a transfer tax which shall be based upon the value of decedent's property wherever situate; and that, of course, means upon real estate as well as upon tangible personal property. There is no more reason for excluding the one than the other.

This reasoning has all the charm of novelty. The Supreme Court of Pennsylvania relies for support of this conclusion on two decisions of this court. The first one is *Keeney vs. New York*, 222 U. S., 525, in which

Mr. Justice Simpson says the conclusion "is foreshadowed but not expressly decided." We are at a loss to see how it is foreshadowed by the opinion in the *Keeney case*, which we have quoted above, in which Mr. Justice Lamar says distinctly that *tangible* articles located outside the state of the domicile cannot be taxed.

The other case relied on is *Maxwell vs. Bugbee*, 250 U. S., 525, in which Mr. Justice Simpson says the question was fairly raised, and quotes from the opinion of this court as follows:

"When the state levies taxes within its authority property not in itself taxable by the state may be used as a measure of the tax imposed."

It is apparent that the Supreme Court of Pennsylvania misapprehended the case this court had before it and the meaning of the language used. In *Maxwell vs. Bugbee* the question raised was as to the inheritance tax upon *the estate of a non-resident*. The tax was levied with respect only to the local real and tangible personal property in the State of New Jersey, and with respect to stock of New Jersey corporations and national banks located in the State of New Jersey. The provision of the state tax law which was in question is the provision requiring the tax levied to bear the same ratio to the entire tax that would be imposed under the act if the decedent were a resident and all his property were located within the state as his property within the state bears to the entire estate wherever situate, specific devises or bequests of prop-

erty within the state being excluded from the computation.

The complaint of plaintiff in that case was that the act inflicted an unequal tax, which bore more heavily on the estates of non-residents than on the estates of residents. When one reads Justice Simpson's excerpt in connection with what follows it in Justice Day's opinion and in connection with Justice Day's references to authorities, it becomes clear that the excerpt does not support the proposition for which it is cited by the Supreme Court of Pennsylvania. Thus Justice Day says (page 539) :

"In the present case the State imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so within limitations which do not really make the tax one upon property beyond its jurisdiction, the decisions to which we have referred clearly establish."

The instant case involves no such question. It involves the proposition that the state of the domicile may add to that which is within its jurisdiction the value of that which is beyond its jurisdiction and then tax the whole. The Pennsylvania act does "really make the tax one upon property beyond its jurisdiction."

Again, this point involves the question of the meaning of the New York and Massachusetts statutes.

Undoubtedly the States of New York and Massachusetts have the power to decide what laws shall be

good to pass title to tangible chattels in those states and upon whom the title shall devolve; and we contend that they have done so.

For example, Section 17 of the *Decedents' Estate Law of the State of New York* (Book 13, *McKinney's New York Laws*, page 48), Record 246 a, says that no person having a wife, child, husband or parent shall by his last will bequeath to charities more than one-half part of his estate, and that the bequests to charities shall be valid to the extent of one-half and no more. Mr. Frick left more than one-half of his estate to charities. Is his will good in New York in the face of this statutory provision?

The Supreme Court of Pennsylvania says that these provisions "relate, however, only to wills of testators there (in New York) domiciled." (See opinion, this book, page 38). The Court of Appeals of the State of New York has decided exactly the contrary, to wit, that it applies to property situate in New York of which a citizen of another state died seized. It has decided that if the bequest to charities made by the will of a citizen of New Jersey exceeds more than one-half of the net value of his entire estate, real or personal, wherever located, the charitable bequest as to all the property located in New York is void and the property goes to the heirs (*Decker vs. Vreeland*, 220 N. Y., 326). It is the law of New York that is going to decide who owns this Frick Collection; and if the question comes up, it will decide that Mr. Frick's will was valid in spite of this provision because his widow and children saw fit to ratify the bequest after his



death; and this is so because that is the law of the State of New York (*Amherst College vs. Ritch*, 151 N. Y., 282).

So too, there are many other statutes, both of New York and of Massachusetts, introduced into the record in this case which show that the validity and effect of Mr. Frick's will is to be determined by the laws of those states.

## POINT II.

### **The State of Pennsylvania Has No Power to Levy a Transfer Inheritance Tax Based on a Valuation of the Estate Which Fails to Deduct the Paramount Taxes—The Paramount Liens Imposed by the United States and by the States Where the Property is Located.**

Everyone must admit that the taxing power of the United States Government is supreme; therefore, all that was left of Mr. Frick's estate the transfer of which the State of Pennsylvania could tax was the remainder after the Federal tax was paid.

Equally so, as Mr. Frick owned stock in the Atchison, Topeka & Santa Fe Railroad, a corporation of the State of Kansas, and the Pennsylvania executors could not get possession of, or exercise any dominion over, the shares until they had paid the Kansas inheritance transfer tax amounting to \$353,887.04, the State of Pennsylvania had no power to tax the estate on a valuation of this Atchison stock at its stock exchange quotation the day Mr. Frick died, disregarding the paramount lien of the State of Kansas. The same thing applies to all the "foreign" stocks.

Mr. Justice Frazer of the Supreme Court of Pennsylvania, in his dissenting opinion in this case, points out the reason why the State of Pennsylvania can-

not impose an estate tax upon the whole estate without deducting the Federal tax: because to do so does, in truth and fact, compel the residuary legatee to pay a tax upon the paramount tax which they have already paid to the Federal Government.

Justice Frazer says (this book page 49) :

"If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States."

Mr. Justice Sweeney, in his dissenting opinion in *Hazard vs. Bliss*, 113 Atlantic, 469 (Rhode Island Supreme Court, May 4, 1921), expresses the same idea as follows:

"By operation of Federal law the net estate left by the decedent has been depleted by the amount of the tax and the deceased was deprived of the right to transfer so much of his net estate as would be required to pay the Federal Estate tax. The decedent had the right to dispose of only so much of his net estate as would be left after the deduction and payment of the Federal tax and the residuary legatee had the right to receive from the decedent only so much of his estate as would be left after the deduction and payment of the Federal Estate tax."

It is not necessary at this time to call the attention of this court to the long line of cases, beginning with *McCulloch vs. State of Maryland*, 17 U. S., 315, but we desire to mention *Flaherty vs. Hanson*, 215 U. S., 515, in which it was held that the requirement of a North Dakota statute, that the holder of a United States liquor license must record it in a certain manner in the State of North Dakota and pay a recording fee of \$25, was an invalid interference with the taxing power of the United States.

It seems to us that there is no escape from the proposition that when a state undertakes to levy an inheritance tax upon the full value of a decedent's property without deducting the paramount United States tax it assumes an increase in the amount of the estate which would pass from the decedent to his heirs equal to the amount of the Federal tax, and, consequently levies a tax upon the Federal tax.

Just so with reference to the paramount taxes which are imposed by other states and are liens upon stock of corporations of those states. We turn, for an example, to the Atchison stock held by Mr. Frick. The State of Kansas had upon that stock a paramount lien amounting to \$353,000, which attached at once upon Mr. Frick's death. It was just as much a lien upon the stock as if the stock had been pledged with a Kansas bank as collateral for a loan. The value of the stock to Mr. Frick's estate in Pennsylvania on the day he died could not be more than its market value on that day less the \$353,000 of paramount Kansas taxes. And when the State of Pennsylvania undertakes to disre-

gard the Kansas tax it really imposes an inheritance tax upon the Kansas tax.

The California court of last resort has reached a conclusion in direct antagonism to the Pennsylvania Supreme Court in the instant case: *Re Estate of Henry Miller*, 195 Pacific, 413 (1921). Mr. Justice Olney says at page 417:

"The authority of the state having actual control of the subject-matter, either because it is personal property within its limits, or because, as in this case, it is the stock of one of its corporations, is, of necessity, the superior. The state of the decedent's domicile can deal with the property only after the requirements of the state of its actual *situs* are satisfied. Putting it in another way and concretely, the stock of Henry Miller in the Nevada corporation comes into his California estate, there to be administered upon and taxed, only after the requirements of Nevada are complied with, and the only thing over which California secures authority is what remains after Nevada has taken its tax."

### POINT III.

**As in This Case, Under Mr. Frick's Will All Inheritance Taxes Are Thrown Upon the Residuary Estate, and as, Regardless of the Will, All Federal Estate Taxes Are by the Law Cast Upon the Residuary Estate, and as the Supreme Court of Pennsylvania Has Decided That This Is an Estate Tax and the Same Result Would Be Reached by the Pennsylvania Statute, It Is Contended that the Taxation of the Estate Passing to the Residuary Legatees, Without Deducting the Inheritance Taxes Paid Other States on Real Estate Located in Other States and the Transfer Taxes Paid the State of Pennsylvania on the General and Specific Legacies and Devises, Is Unconstitutional.**

The question is, Can Pennsylvania not only tax the estate transferred, but also tax the taxes?

In the instant case, where the burden of all taxes is thrown upon the residuary legatees and directed to be paid out of the residuary estate, the Pennsylvania executors paid the inheritance taxes due other states on all the foreign real estate. The question is, Can the State of Pennsylvania make the residuary legatees pay a tax on the estate without a deduction of the

taxes paid on the foreign real estate? Using as an argument an illustration: Let us assume that a resident of Pennsylvania dies **possessed only of foreign real estate**. The heirs pay the tax in the foreign state upon the transfer of the real estate and go into possession. Under what power and by what process can the State of Pennsylvania collect a tax imposed upon the taxes paid to the foreign state? It is only from such estates as have other assets in Pennsylvania that the State of Pennsylvania may ever hope to collect such a tax. Does this give to estates that have assets in Pennsylvania the equal protection of the laws? Does not this statute essentially lack uniformity in that it collects from estates of residents a tax upon foreign assets where the estates have assets in Pennsylvania, and yet collects no tax from the estates of residents which consist entirely of foreign assets?

Under the same conditions the executors have paid the Pennsylvania inheritance taxes upon the portion of the estate devised to the general and specific legatees. But in arriving at the amount of the tax which must be paid under the terms of the will and the Pennsylvania statute by the residuary legatees, the taxing authorities by failing to deduct from their calculated residuary estate the taxes paid on the specific and general legacies and devises have imposed a tax upon a fictitious residuary estate, which is not in the hands of the executors for distribution.

The Pennsylvania Act is somewhat peculiar. While the Supreme Court of Pennsylvania has said that the tax is an estate tax imposed upon the amount of the

whole estate, still under the terms of the act it is perfectly clear that executors have the right to deduct from the legacy of each legatee only the tax on the portion of the estate which he receives; whereas, in this case, by failing to deduct from their calculated unreal residuary estate the tax imposed upon the specific and general legacies, the taxing authorities have imposed upon the residuary legacies a tax upon the other taxes. To put it another way. You have here an act which in terms imposes upon the property received by the legatees a tax at specified rates based upon their relationship or lack of relationship to the decedent, whether such beneficiaries be general, specific or residuary legatees. The effect, however, of this adjudication is that the residuary legatees in this case are required to pay a tax on what they actually receive at a higher rate than residuary legatees in other estates pay; and this, not because of the provision in Mr. Frick's will requiring his executors to pay all the taxes out of the funds of the estate, which has the effect of imposing such taxes upon the residuary legatees, but because of the action of the taxing authorities in arbitrarily adding the amount of those taxes to the amount of money which the residuary legatees actually receive.

*It is respectfully submitted* that if the writ of error already granted is not the proper remedy in this case, the Federal questions involved are of such great and general importance, and there is such conflict and confusion between the decisions of state courts of last resort upon these points, that a writ of *certiorari* should be granted by your Honorable Court to the



end that there shall be an authoritative decision of the extent of the taxing power of the states and a proper adjudication of petitioner's rights under the United States Constitution and laws.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Petitioners.*



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WM. B. STARRS

# **Supreme Court of the United States**

125

**NO. 445 OCTOBER TERM, 1923.**

ADELAIDE H. C. FRICK, HELEN C. FRICK,  
CHILDS FRICK, HENRY C. McELDOWNEY  
and WILLIAM WATSON SMITH, Executors of  
the Last Will and Testament of Henry C. Frick,  
Deceased, Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## **PETITION FOR WRIT OF CERTIORARI TO REVIEW DECISION OF SUPREME COURT OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.**

A Writ of Error has been allowed in this case by the  
Chief Justice of the Supreme Court of Pennsylvania  
and docketed at this number and term. This  
petition for certiorari is filed in the case to meet  
the possible contingency that the questions in-  
volved cannot be heard on writ of error.

✓  
✓ GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
Attorneys for Petitioners.



## **Notice of Application for Writ of Certiorari.**

Notice is hereby given that the above named petitioner will, on Monday, October 1st, 1923, at the opening of the Court, or as soon thereafter as counsel can be heard, present her verified petition, which has been filed in the office of the Clerk of the Court, and a copy of which is hereto annexed, together with copy of the entire record in this cause, to the Supreme Court of the United States, at the Court rooms in the Capitol in the City of Washington, D. C., and will, at such time and place, move the Court to issue its writ of certiorari to the Supreme Court of the State of Pennsylvania to review the decision of said Court rendered in the above named cause.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,

*Attorneys for Petitioner.*

Dated September 17, 1923.

To:

COMMONWEALTH OF PENNSYLVANIA,  
HON. GEORGE W. WOODRUFF,  
Attorney General.

HON. DAVID A. REED,  
Attorneys for the Commonwealth of  
Pennsylvania.



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# Supreme Court of the United States

NO. 445 OCTOBER TERM, 1923.

ADELAIDE H. C. FRICK et al., Petitioners,

vs.

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

## **Petition for Writ of Certiorari to Review a Decision of the Supreme Court of Pennsylvania.**

*To the Honorable The Supreme Court of the United  
States:*

The petition of Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, Executors of the last will and testament of Henry C. Frick, deceased, respectfully shows:

1. In the matter of the Estate of Henry C. Frick, originally in the Orphans' Court of Allegheny County, Pennsylvania, an adjudication was made as to the transfer inheritance (estate) taxes due to the State of Pennsylvania from the Estate of Henry Clay Frick, who was a citizen of Pennsylvania and was domiciled there at the time of his death. Your petitioners are

the executors of his will. The executors paid voluntarily to the Commonwealth of Pennsylvania the sum of \$1,978,949.71, which they claimed was the amount payable as a transfer inheritance tax to the State. The Commonwealth of Pennsylvania claimed that it was entitled to the additional sum of \$1,188,248.16. About one-half of this additional amount was arrived at by adding to the taxable value of the estate, as returned by the executors, the value of tangible articles of personal property (that is, Mr. Frick's art collection and household furniture), which were located at the time of his death in his residences in the States of New York and Massachusetts and upon which inheritance taxes had been paid to the States of New York and Massachusetts, respectively, to the extent that they were taxable under the estate tax laws of those states. Your petitioners claimed that it was beyond the power of the State of Pennsylvania to levy any inheritance tax upon those articles and that said tax constituted a violation of the Fourteenth Amendment. The remainder of the increased amount of tax was caused by the disallowance by the Orphans' Court of Allegheny County (in ascertaining the taxable value of the residuary estate) of certain deductions claimed by the executors, which consisted of estate and inheritance taxes paid to the United States and some eighteen of the states constituting the United States and to the Province of Quebec (upon real estate located in those states and shares of stock of corporations incorporated under the laws of those states). Your petitioners claimed that the failure to allow these deductions in ascertaining the taxable value of the residuary estate

was a violation of the Constitution and laws of the United States.

Petitioners prosecuted an appeal to the Supreme Court of Pennsylvania and said court decided the questions adversely to petitioners' contention. There are seven justices of the Supreme Court of Pennsylvania, of whom five participated in the argument and the decision. One justice was ill and one was disqualified for the reason that he had been Attorney General of the State and counsel for the Commonwealth at the time this controversy originated. The opinion of the court was rendered by Justice Simpson and concurred in by Chief Justice Von Moschzisker and Justices Walling and Kephart. Justice Frazer filed a dissenting opinion. Your petitioners made an application to the Supreme Court of Pennsylvania for the allowance of a writ of error from this court. The Supreme Court of Pennsylvania held that this was a proper case for the allowance of a writ of error and the writ was allowed by Robert Von Moschzisker, Chief Justice of the Supreme Court of Pennsylvania. The writ of error was duly sued out and has been filed in this court and docketed at this number and term. While petitioners have been advised by their counsel that in counsel's opinion this is a case which can properly be brought to this court by a writ of error, they have also been informed that there is possibly some doubt as to whether the correct remedy is not *certiorari*; and therefore your petitioners seek to have this court review the decision hereinbefore referred to on *certiorari* in case it should be held that the case is not properly here upon a writ of error.

2. The first question involved in this litigation is whether the State of Pennsylvania did not exceed its power and jurisdiction when it passed this statute which as applied to this case provides that there shall be included in the taxable value of the estate tangible articles of personal property located at the time of Mr. Frick's death in his two residences in New York City, New York, and Pride's Crossing, Massachusetts, and whether, in collecting an inheritance tax upon the value of those articles, it did not violate the due process clause of the Constitution of the United States.

3. Petitioners' next contention is that, when the Commonwealth of Pennsylvania, in ascertaining the tax which must be borne by the residuary legatees, refused to allow as a deduction from the taxable value of the estate the estate tax levied by the United States Government which had been paid to the amount of \$6,338,898.68, it violated clause 1 of section 8 of Article 1 of the Constitution of the United States in that it interfered with the power of Congress to 'lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States' and also clause 2 of Article VI of the Constitution of the United States in that it denied that the said Constitution and the laws of the United States made in pursuance, to wit, among others, sections 400 to 410, inclusive, of an Act of Congress of the United States, entitled "An act to provide revenue and for other purposes," approved February 24, 1919 (40 Stat., pp. 1096-1101) and section 3467 of the United States Revised Statutes, are the supreme law of the

land and that the judges in every state are bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding, and also clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprived your petitioners of property without due process of law and also denied to them the equal protection of the law.

4. Petitioners' next contention is that so much of the judgment of the Orphans' Court of Allegheny County, Pennsylvania, and the Supreme Court of Pennsylvania as directs the payment of the tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid to other states on the transfer of real estate in other states will deprive petitioners of their property without due process of law in violation of clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

5. Petitioners' next contention is that so much of the tax authorized and directed to be paid by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania as includes a tax on the estimated value of the estate, without a deduction of inheritance taxes paid to other states on the transfers of shares of stocks of corporations incorporated under the laws of those states, will deprive your petitioners of their property without due process of law and will de-

prive them of the equal protection of the laws in violation of section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

6. Your petitioners' next contention is that, in so far as the decree of the Orphans' Court of Allegheny County and of the Supreme Court of Pennsylvania distributes to the Commonwealth of Pennsylvania a sum of money which includes a tax on the estimated value of the estate without a deduction of the Pennsylvania inheritance tax from the estimated value of the gross estate the effect of such action is to increase the taxable value of the residuary estate, the residuary legatees are deprived of their property and the said tax is invalid on the ground of its being repugnant to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives your petitioners of property without due process of law and also denies to them the equal protection of the laws.

7. The facts upon which this controversy arises are as follows: Mr. Henry Clay Frick died in the City of New York on the 2nd day of December, 1919. He left a last will and testament dated the 24th day of June, 1915, probated on December 6, 1919, in the office of the Register of Wills of Allegheny County and of record in Will Book Volume 160, page 6. This will is in writing. It was subscribed at the end by Mr. Frick in the City of Pittsburgh, Pennsylvania. It was attested by the written signatures of three citizens of Pittsburgh and was in Pittsburgh at the time of his death. Mr. Frick was born in the State of Pennsylvania and he was continuously domiciled in said State from his birth until his death.

Mr. Frick, at the time of his death, had three houses. One, known as Clayton, is located in the City of Pittsburgh, Pennsylvania. It was acquired by him soon after his marriage and given (conveyed) by him shortly thereafter to his wife. This was his legal domicile, so denominated by him when he registered every year as a voter in the voting precinct and ward of the City of Pittsburgh in which the house is situated. Another of his residences was a house at Pride's Crossing in the State of Massachusetts. By his will he devised to his wife a life estate in this property and the remainder to his daughter. He bequeathed to his wife all the tangible personal property (furniture, pictures, etc.) located in and about this residence. The taxing authorities of the State of Pennsylvania did not attempt to include the value of this real estate in Mr. Frick's taxable property, but they included the value of the tangible personal property located there at a valuation of \$325,534.25 and levied a transfer inheritance estate tax thereon. This levy has been sustained by the Orphans' Court of Allegheny County, Pennsylvania, and by the Supreme Court of Pennsylvania, the court of last resort.

Mr. Frick also owned another residence on Fifth Avenue in the City of New York, the land and buildings being of the value of upwards of \$3,000,000. This residence he devised to a charitable corporation of the State of New York known as "The Frick Collection," but he gave his wife the right or license to use it "so long as she should occupy the same as one of her residences." The State of Pennsylvania has not attempted

to tax this real estate, although the Act, the constitutionality of which petitioners are here attacking, directs such a levy to be made. Contained in this residence were Mr. Frick's collection of paintings, antique furniture and other objects of art. These he bequeathed to said corporation of the State of New York known as "The Frick Collection," with the mandatory provision that the collection should always be retained and maintained in said residence for the use and benefit of all persons whomsoever. This residence also contained certain other furniture, household supplies, etc., which were not a part of the Frick Collection. These Mr. Frick bequeathed to his wife. The State of Pennsylvania valued the articles of personal property comprising "The Frick Collection" at \$13,132,391, and valued the rest of the tangible personal property (furniture, etc.) that was in this residence and garage adjacent thereto at \$77,818.75. The Commonwealth included these valuations in its estimate of the taxable value of the estate and levied a tax thereon. Your petitioners contend that these articles of tangible personal property were beyond the dominion of the State of Pennsylvania, and that the Pennsylvania Act, in so far as it authorized and directed a tax to be levied on them, is a violation of the Constitution of the United States, has the effect of reducing the residuary estate by upwards of \$600,000, and deprives petitioners of their property.

The balance of the tax in controversy in this case, amounting to upwards of \$500,000, was caused by the refusal of the State of Pennsylvania (in accordance



with the mandate of the statute as it was construed by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania) to deduct from the total taxable value of the estate before levying the tax four items: (a) estate taxes paid to the United States which were a paramount lien upon the whole estate; (b) transfer inheritance estate taxes paid to other states upon real estate located in those other states; (c) transfer inheritance taxes paid to other states and to the Dominion of Canada upon shares of capital stock of corporations organized under the laws of those states and the Dominion of Canada, which were a paramount lien upon those shares and where the shares could not be reduced to possession by the executors or over which no act of dominion could be exercised by them until such foreign taxes were paid, and (d) the inheritance taxes imposed by the State of Pennsylvania upon the general and specific devises, which taxes, so paid, amounted to \$1,925,247.61 (which will be increased if this decision of the Supreme Court of Pennsylvania stands by the additional amount of \$1,200,000).

Some of these taxes by the law and all of them by the terms of Mr. Frick's will are thrown upon the residuary estate.

Your petitioners contend that all of the additional Pennsylvania estate taxes were imposed in violation of their rights under the Constitution of the United States:

8. Therefore:

THE FUNDAMENTAL QUESTIONS INVOLVED  
IN THE CASE ARE

(1) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication made in this case in conformity with it impose a transfer inheritance tax on tangible articles of personal property located at the time of their owner's death in Massachusetts and New York, has not the Commonwealth exceeded its power, and do not the statute and the adjudication violate the Constitution of the United States?

The tangibles in Massachusetts were located at the testator's summer home at Pride's Crossing. They were given by the will to Mrs. Frick and consisted of paintings, furniture, household stores, farm implements, etc. The tangibles in New York were located at the testator's New York house. They were given by the will in part to Mrs. Frick and in part to the Frick Collection, a charitable corporation of the State of New York, which the testator by his will directed to be formed for the purpose of receiving them, and to which he devised the New York house. The tangibles given to the corporation consisted of decedent's paintings, antique furniture and other objects of art which were contained in the New York house, and were bequeathed with the provision that they must remain in that build-

ing forever. The tangibles given to Mrs. Frick consisted of the contents of the New York house other than the art collection, such as household stores, etc., and the contents of the garage, such as automobiles, tools, etc.

(2) In so far as the Pennsylvania Inheritance Tax Law of 1919 and the adjudication in this case made in conformity with it impose a transfer inheritance tax to be paid by the residuary legatees and devisees without a deduction from the gross estate of the amounts paid (a) to the United States as an estate tax; (b) to other states as taxes on real estate; (c) to other states as taxes on the transfer of shares of stock of corporations of those states; and (d) to the Commonwealth of Pennsylvania as inheritance taxes on general and specific legacies, does not said act exceed the power of the Commonwealth of Pennsylvania and violate the Constitution of the United States?

Petitioners contended in the Pennsylvania courts that the Pennsylvania Inheritance Tax Law of 1919, under which this tax was levied, imposes a succession tax which applies only to the bequests received by the various beneficiaries. The Supreme Court of Pennsylvania has decided to the contrary; that is, it has decided that this act imposes an estate tax and not a succession tax. Petitioners concede that the decision of the Pennsylvania courts upon the meaning of the statute is not reviewable here. The Pennsylvania inheritance tax act, as construed by the Pennsylvania courts, imposed an estate tax upon the whole property, real and personal, of which the decedent died seized, wherever situate, and allowed deductions to be made only for

debts of the decedent and administration expenses. The tax imposed by the act, however, is not uniform, but is classified according to the relationships of the beneficiaries to the deceased. Under this statute, the bequests to Mr. Frick's wife and his lineal descendants were subject to a two per cent. tax. All other devises and bequests were subject to a five per cent. tax. The Pennsylvania act contains no exemption for charities.

In order to assess the tax at the different rates, admittedly a difficult if not impossible thing to accomplish where the tax is levied upon the decedent's whole estate and not upon the gifts to the beneficiaries, the taxing authorities adopted the following method, which the Supreme Court of Pennsylvania by affirming the decision of the Orphans' Court of Allegheny County has sustained.

This is the way they made their levy. They first took the values of all the real estate in Pennsylvania specifically devised (except the devise to the City of Pittsburgh for a park which was not taxable) and of all the personal property specifically bequeathed, wherever situate, and calculated a tax on them at the rate of either two or five per cent. They then took from the will the amounts of the general legacies and assessed a tax on those at the proper rates. This brought the calculation to a point where they had found the value of the real estate in Pennsylvania and all the other property disposed of by the will, except the residuary estate, to be \$55,783,794. This it will be understood is the sum of the general and specific bequests and devises (excluding real estate outside of Pennsylvania). They then fixed the value of the entire estate,

excluding real estate outside of Pennsylvania, at \$89,675,098.45. From this total valuation they subtracted the sum of the specific devises and bequests and reached a residue of \$33,891,304.45. From this residue they deducted the estimated administration expenses and debts of the decedent amounting to \$9,187,177.90, leaving an estimated balance of \$24,704,126.55, which the Orphans' Court of Allegheny County has christened "the net residuary estate." The taxing authorities then proceeded to tax thirteen-hundredths of this so-called net residuary estate at two per cent. because it is bequeathed to the daughter of the decedent, and eighty-seven-hundredths at five per cent. because under the will it goes to various charities. These two sums they added to the tax on the specific and general devises and legacies, which gives an aggregate amount of \$3,064,107.85. Deducting \$1,978,949.71 previously paid by the executors on account, and adding \$103,090.02 interest, they arrived at a total unpaid tax claim of \$1,188,248.16. This is the amount for which the Orphans' Court of Allegheny County entered judgment. The Supreme Court of Pennsylvania on appeal by the Commonwealth added \$100,000 (and interest thereon) to this amount, being a tax of five per cent. on what is known as the Park Endowment Fund of \$2,000,000, which the court below had found was not taxable.

The actual net residuary estate is not this fictitious amount of \$24,704,126.55 arrived at as shown above. There is no such amount of money in the residuary estate, and the residuary legatees will never get it.

The amount of money actually in the residuary estate is this estimated amount less \$6,338,898.68 paid to the United States as Federal inheritance taxes, less \$1,084,459.42 paid to other states and countries as taxes, less \$1,978,949.71 paid to the Commonwealth of Pennsylvania as inheritance taxes, that is to say, less a total sum of \$9,402,307.81. So the actual residuary estate now in the hands of the executors is only \$15,301,818.74. Moreover, if this decision of the Supreme Court of Pennsylvania stands, the residuary estate will be still further reduced by about \$1,300,000, additional Pennsylvania taxes that will have to be paid; and, if the Commissioner of Internal Revenue is successful in the contention he is making for additional United States estate tax, it will be reduced by the further sum of \$3,100,000. This will bring the real value of the residuary estate down to about \$10,901,818.74. So that the actual net residuary estate, which it may be assumed the residuary legatees will receive, if it is not still further depleted by taxes, is not twenty-five million dollars, but between eleven and fifteen million dollars.

Petitioners aver that the estate is deprived of its property without due process of law when, under the mandate of the Pennsylvania statute as construed by the court, it is compelled to pay an inheritance tax figured upon a residuary estate, arbitrarily assumed or ordered or decreed to be twenty-five million dollars, but which, in point of fact, is only somewhere between eleven and fifteen million dollars.

9. While your petitioners have been advised by counsel that the writ of error which has been allowed

in this case is their proper remedy under the decisions of this court (see *Eureka Pipe Line Company vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Company vs. Hallanan*, 257 U. S., 277; *Dahnke-Walker Milling Company vs. Bondurant*, 257 U. S., 282), if the court should be of the opinion that the questions involved in this case cannot properly be raised upon a writ of error, then petitioners respectfully submit that a writ of *certiorari* should be granted in this case for the following REASONS:

(a) Because the decision of the highest court of the State of Pennsylvania involves federal questions which were clearly raised in every court and at all stages of the proceedings and were definitely decided and passed upon adversely to petitioners' contention by the opinion and decree of the highest court of the state, to wit, the Supreme Court of Pennsylvania;

(b) The federal questions involved are questions of general and great importance and have never been decided by this court;

(c) There is a conflict between the decisions of the courts of last resort of various states as to whether or not the state in which a decedent was domiciled at the time of his death may lawfully levy an estate or succession tax upon tangible articles of personal property situate in some other state. This question, which depends upon the United States Constitution, has never been decided by any federal court.

(d) The intense pressure for money to use for governmental purposes is felt by each of the states of the Union, as well as by the government of the United States. In response to this pressure, several states are

developing a tendency to reach out beyond their limits and subject to taxation for their own purposes property which all will admit is subject to taxation by the state of its situs. Such a situation tends to chaos. The present situation is that inheritance taxes are being levied by the federal government, by the state wherein the decedent was domiciled, by the state in which his real estate was located, by the state in which his tangible personal property was located, by the state where the corporation in which he owned stock was domiciled, by the state in which his debtor was domiciled, by the state in which some railroad corporation domiciled in some other state has a line of tracks, and so on indefinitely. There should be an authoritative decision of this court as to whether or not the state of the domicile can levy an estate tax on the furniture in a summer residence which the decedent owned in some other state. That is one of the questions involved in this case. The more important one as to the amount involved is, Can Pennsylvania levy an estate tax on Mr. Frick's great art collection which is located in New York and which can never be removed therefrom or brought into Pennsylvania?

(e) There is a conflict between the decisions of the States of Pennsylvania and New York as to the construction of a New York statute.

The Supreme Court of Pennsylvania in this case says that the New York statute which limits the proportion of the estate which a decedent may give to charity (this is a vital question involved in the present controversy bearing upon the point whether the be-



quest known as The Frick Collection passed under Mr. Frick's will or whether it passed under the release or assignment executed by his widow and children after his death) does not apply to property in New York belonging to a Pennsylvania citizen. See Justice Simpson's opinion (page 38 of this book), beginning with the sentence, "These (New York statutes) relate, however, only to wills of testators there domiciled \* \* \*"; whereas, the Court of Appeals of the State of New York has decided that the statute applies to property in the State of New York, of which a decedent who was a citizen of another state died seized: *Decker vs. Vreeland*, 220 N. Y., 326.

(f) It is submitted that the controlling reason given by the Supreme Court of Pennsylvania for sustaining the constitutionality of this act, by which the State of Pennsylvania levied this tax on tangible articles of personal property located outside the state (which act requires the levying of an inheritance tax upon all property, real and personal, wherever situate, which belonged to any person domiciled in Pennsylvania), is unsound. The reason advanced by the court is that, because "the property being distributed on this proceeding is all in this state; appellants are our citizens and duly appeared and contested the claim of the Commonwealth, \* \* \*," and because the court has jurisdiction over the person who raises the question (that is, one of the residuary legatees, who is a citizen of Pennsylvania), and the decedent, the State having jurisdiction over both—the decedent having been and appellants being now domiciled in the State—and the latter appearing to the action, all the

property now being distributed being within the State and a valid state statute lawfully imposing the tax, the United States Constitution has no bearing upon the case. (See Justice Simpson's opinion, this book, pages 30 and 31.)

The residuary legatee referred to as a citizen of Pennsylvania was entitled to thirteen-hundredths of the residuary estate; the rest of the residuary estate goes to charity. Under the construction placed upon this act by the Pennsylvania Supreme Court to wit, that it is an estate tax, as well as under the provisions of Mr. Frick's will, the burden of the whole of these inheritance taxes is cast upon the residuary legatees. Fifty-three per cent. of the residuary estate goes to Princeton University, Harvard College, Massachusetts Institute of Technology and the Society of the Lying-in Hospital of the City of New York, none of which institutions are domiciled in Pennsylvania. The right of the State of Pennsylvania to impose the tax cannot be any different whether the question was raised by a citizen of Pennsylvania or by Princeton University, a citizen of New Jersey. Besides this, the question was also raised by your petitioners, the executors, who represent all the residuary legatees, resident and non-resident.

In *Koch's Estate*, 4 Rawle 268, the Supreme Court of Pennsylvania decided that the administrator could prosecute an appeal from a decree of distribution affecting the interests of legatees residing abroad.

(g) In ascertaining the value of the estate for the purpose of imposing a transfer inheritance estate

tax by the State of decedent's domicile, must there not under the Constitution and laws of the United States be deducted (1) the inheritance tax which the executors were compelled to pay to foreign states under whose laws corporations in which decedent owned stock were incorporated, before said shares of stock could be reduced to possession by the executors; (2) the estate tax levied by the United States under the Acts of Congress; (3) the inheritance taxes paid to foreign states upon real estate located in such foreign states; (4) the inheritance *estate* tax levied by the State of Pennsylvania upon the general and specific legacies and devises.

All these are questions of general importance and none of them have ever been decided by this court.

Wherefore, your petitioners respectfully pray that, if in the opinion of this Honorable Court a writ of error does not lie in this case, a writ of *certiorari* may issue out of it under the seal of this court, directed to the Supreme Court of Pennsylvania, commanding the said court to certify and send to this court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings in said Supreme Court of Pennsylvania in this case, to the end that the case may be reviewed and determined in this court as provided in section 240 of the Act of Congress designated as the Judicial Code, and the said decree of the Supreme Court of Pennsylvania in this case and every part thereof may be reviewed by this Honorable Court and the decree of the Supreme Court of Pennsylvania may be reversed and the decision and

decree of the Orphans' Court of Allegheny County may also be reversed.

And your petitioners will ever pray.

ADELAIDE H. C. FRICK,  
HELEN C. FRICK,  
CHILDS FRICK,  
HENRY C. McELDOWNEY,  
WILLIAM WATSON SMITH,

*Executors of the last will and  
testament of Henry C. Frick,  
deceased, Petitioners.*

By

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Their Attorneys.*

*State of Pennsylvania,* } ss:  
*County of Allegheny.* }

William Watson Smith, being duly sworn, says that he has read the foregoing petition and knows the contents thereof and that the same is true as he is advised and believes.

Sworn to and subscribed before me, this ..... day  
of ....., 1923.

**Opinion of Majority of the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
FOR THE WESTERN DISTRICT

ESTATE OF HENRY C. FRICK, Deceased.

Appeals of THE COMMONWEALTH  
OF PENNSYLVANIA. }

Nos. 39 and 40  
October Term,  
1923.

Appeals of HELEN C. FRICK, a  
residuary legatee. }

Nos. 42 and 44.  
October Term,  
1923.

Appeals of ADELAIDE H. C. FRICK,  
HELEN C. FRICK, CHILDS FRICK,  
HENRY C. MCELDOWNEY and  
WILLIAM WATSON SMITH, Ex-  
ecutors of the last will and  
testament of HENRY C. FRICK,  
deceased, and HELEN C. FRICK,  
a residuary legatee. }

Nos. 43 and 45.  
October Term,  
1923.

Six appeals from Decrees of the Orphans' Court of Alle-  
gheny County, as of December Term, 1920, No.  
476, and of March Term, 1922, No. 171.

**OPINION OF THE COURT.**

SIMPSON, J.

We are asked by these six appeals to review the action of the court below in determining the amount of inheritance tax due by the estate of Henry C. Frick, deceased, to this Commonwealth, of which he was a resident, and in which he was domiciled when he died

on December 21st, [2nd] 1919. A number of points are raised; some concern the interpretation of the Constitution of the United States or of this State; others the construction of our Inheritance Tax Act of June 20, 1919, P. L. 521; and still others the meaning of testator's will. The argument took a wide range, possibly because of a belief regarding the importance of the question raised, due partly to the large amounts involved; and perhaps also because of a conviction, in which the writer shares, that the State should have as part of its public policy, a refusal to tax any gift for a "purely public charity," since no valid reason can be given for taxing the public for the benefit of the public. Whatever appellants' reasons may be, however, we are compelled to follow along the lines of the able arguments presented, though this results in what would ordinarily be considered an unnecessarily long opinion.

By testator's will (so far as it need be considered here), he gave to certain trustees "all the books, pictures, paintings, \* \* \* antique or artistic furniture" \* \* \* contained in his dwelling house in New York City, to be held by them until a corporation, to be known as "The Frick Collection," should be formed, under the laws of the State of New York, when these articles should be transferred to it; he gave the rest of his personal property in said dwelling house, and also in his residence at Pride's Crossing, Massachusetts, to his wife "excepting, however, from this bequest, all articles of personal property" given to the trustees and corporation above stated; he gave to the city of Pittsburgh a tract of 151 acres of land "as a public park," and to the Union Trust Company of that City, the sum of \$2,000,000, the income therefrom to be used in "maintaining,

improving, embellishing and adding to the said park, and keeping the same in proper condition;" and he directed "that all inheritance, legacy, succession or similar duties or taxes, which shall become payable in respect to any property or interest passing under my will \* \* \* shall be paid out of the capital of my residuary estate," which, as found by the court below, amounted to \$24,704,126.55.

After the probate of the will, the executors paid to the United States the sum of \$6,338,898.68 being the Federal Estate Tax upon the property left by decedent; to various States and the Province of Quebec, the sum of \$1,084,459.42, being the inheritance taxes chargeable under their laws; to the State of New York the sum of \$131,000; and to this Commonwealth the sum of \$1,978,949.71, the inheritance tax which the estate admitted to be due. The governments specified do not concede the first three of these payments to be sufficient in amount; whether or not the last one is, is the question to be decided in this opinion.

By proper proceedings before the register of wills of Allegheny County, the amount of the tax due this State was found to be largely in excess of the sum already paid, whereupon the executors and one of the residuary legatees appealed to the orphans' court of the county, which determined a smaller amount was due, and later, on an adjudication of the executors' account, awarded to the Commonwealth the additional sum of \$1,188,248.16. It was reached by assessing the proper percentages on the total value of the real estate in Pennsylvania, and of the personalty wherever found (the valuations being agreed upon); the \$5,156,625.00 worth of realty located elsewhere not being considered or included.

From these two decrees the present appeals were taken; two of them by the Commonwealth, alleging additional taxes should have been assessed, and the other four by the executors and a residuary legatee, averring that too much was awarded. No claim was made upon the fund except by the State and the legatees; no creditor asked that distribution be delayed or a fund set apart to await a future adjudication of his claim; and no refunding bonds were required of the distributees, to whom the balance in the account was awarded. Hence, even if there are unpaid creditors, who hereafter present and prove their claims, they cannot, under our statutes, successfully maintain suits against the distributees or the executors, to obtain a refund of the sums paid by the latter to the former, on the faith of the court's decree, but can only have recovery against assets not appearing in the present account: Sections 49 (b) and 50 (a) and (b), Fiduciaries Act of June 7, 1917, P. L. 447, 515, 516-7.

The basic claim of the executors and residuary legatee being that the award is excessive, by reason of the fact that the court below improperly included, in the total valuation of the estate, certain of the assets left by testator, and mistakenly refused to allow certain credits against that valuation, in the natural order of consideration our first inquiry is: What does the Act of June 20, 1919, P. L. 521, under which the proceedings were had, provide regarding the tax and how it is to be calculated? Section 2 thereof provides, *inter alia*, that "In ascertaining the clear value of such (decendent's) estates, the only deductions to be allowed from the gross value of such estates shall be the debts of the decedent and the expenses of the administration of such estates,



and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or territory." And section 10 says: "The register of wills of the county, in which letters testamentary or of administration were granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth, shall appoint an appraiser, whenever occasion may require, to appraise the value of the property or estate of which such decedent died seized or possessed." \* \* \*

It is clear from these sections that the tax is to be levied upon "the clear value" of the entire estate (from which has been excluded, however, real estate located outside of Pennsylvania), after deducting only "the debts of the decedent and the expenses of the administration of such estates." The appraisement to be made is not of the legacies or devises but of the whole estate of a decedent; the debts and expenses of administration are not to be deducted from any particular gift or gifts, but from the whole estate, and the taxes paid to the United States or to any other State or territory, if permitted to be deducted, would have been from the whole estate. We therefore conclude that it is the entire value of the estate, less the credits specified, which forms the basis of the tax, and not the amounts received by the particular legatees; hence, as stated in *Knowlton vs. Moore*, 175 U. S., 41, that which the State "taxes is not the interest to which some person (or many) succeeds on a death, but the interest which ceased by reason of the death." Since this is the true construction of the Act, much of the argument made by these appellants, founded as it is upon the conten-

tion that the tax is levied only upon the particular gifts, when and as received, becomes ineffective because it has no relation to the actual status.

Basing their elaborate argument largely on their erroneous construction of the Act as last stated, the executors and residuary legatee who appeal, ask us to ignore the clear and unambiguous language of section 2, above quoted, and to decide that the court below erred "In ascertaining the clear value" of the estate, because it did not deduct from its "gross value" (a) The amount paid the Government for the Federal Estate Tax; (b) The amounts paid other States and the Province of Quebec for their inheritance taxes on decedent's real and personal property there located; and (c) The inheritance tax payable to this State. *Kirkpatrick's Estate*, 275 Pa., 271, is an express authority against the first of these claims; in principle it also decides the others adversely to these appellants. In deference to the able argument made, however, the supposedly new points presented will be briefly considered aside from that decision.

In support of their contention upon these points, they urge that refusal to allow those items to be deducted "adds the Federal tax, the tax paid to the other States," and that paid to this State, to the total valuation to which the tax rate is applied; this is erroneous, however, it simply refuses to allow those sums to be deducted from the "gross value of such estates" "in ascertaining the clear value" thereof, exactly as does the Federal Estate Tax Act (*New York Trust Co. vs. Eisner*, 256 U. S., 345, 349, 350), and many of the inheritance tax laws of other States. No valid reason is given why this may not be done. On the contrary, as stated in the

last cited case, where "the tax attaches to the estate before distribution,—if it is a tax on the right to transmit, or on the transmission at its beginning—obviously it attaches to the whole estate, except so far as the statute sets a limit."

Recognizing that their contention now being considered is in direct antagonism to the express language of the statute, these appellants in effect ask us to ignore this language, and from isolated phrases and words in the statute to reach an opposite conclusion, partially because of general expressions found in our opinions in *Oliver's Estate*, 273 Pa., 400, and *Kirkpatrick's Estate*, 275 Pa., 271,—though this question was not directly raised in either of them—apparently forgetting the basic rule that "It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated": *Cohens vs. Virginia*, 6 Wheaton, 264, 397, per Marshall, C. J., *O'Malley vs. O'Malley*, 272 Pa., 536. Of course we cannot permit isolated expressions in a statute, or in any opinion of ours, to override the express language of the Act being construed.

It is further urged that there are constitutional objections to the provisions of the statute, if the deduc-

tions above referred to are not made. The only section of the Constitution of this State, which is supposed to affect the matter, is article IX, section 1, which provides that "all taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." This, however, is not infringed, since the estates of all decedents are subjected to a uniform inheritance tax in all parts of the Commonwealth; and hence we turn to the provisions of the Federal Constitution, alleged to have been violated by the decree below, to see if they or any of them stand in the way of enforcing the statute as written.

The first claim regarding this is that it is "repugnant to clause 1 of section 8 of Article I of the Constitution of the United States, in that it interferes with the power of Congress to levy and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." This is a veiled attack upon our dual form of government, and, in its ultimate analysis, would appear to be an attempt to deny to the States any right to exercise their taxing power upon subjects which the Federal Government may also tax. It needs no argument to show the error of such a contention. Moreover, there cannot be found anywhere within the four corners of the Act, in the practice under it, or in the decree below, the slightest evidence of a desire to interfere with the taxing powers of the United States.

It is further said that if the taxes paid the Government are not deducted our statute will be "repugnant \* \* \* also to clause 2 of Article VI of the Constitution of the United States, in that it denies that the said Constitution and the laws of the United States made in

pursuance thereof \* \* \* are the supreme law of the land, and that the judges in every State are bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." In this day probably no one would deny the supremacy claimed; this court never has. The principle contended for is wholly inapplicable, however. Given the fact, that a State may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plumber vs. Coler*, 175 U. S., 115; *Orr vs. Gilman*, 183 U. S., 278), it necessarily follows that, in determining the way in which this tax shall be computed, it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other States. "The right to dispose of one's property by will, and the right to have it disposed of by the law, after decease, is created by statute, and therefore the State may impose such conditions upon the exercise of this right as it may determine" (*Banker's Trust Co. vs. Blodget*, decided by the Supreme Court of the United States January 22, 1923, and not yet officially reported); hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, "The power of taxation, with its accessorial sanctions, is a power of government, and all property is subject to it." If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her.

It is also contended that the refusal to make these deductions, and the inclusion of the value of the tangible personalty, located elsewhere than in Pennsylvania (which will be further considered hereafter), made the decree below "repugnant \* \* \* also to clause 1 of the 14th Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws." This contention is fully answered by what is said in *Keeney vs. New York*, 222 U. S., 525, 535: "The 14th Amendment does not diminish the taxing power of the State, but only requires that, in its exercise, the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the State of the Power to select the subjects of taxation. \* \* \* There can be no arbitrary or unreasonable discrimination;" but this can only arise (*Dane vs. Jackson*, 256 U. S., 589, 599) where the State tax law "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation,—"to spoliation under the guise of exerting the power of taxation," a situation not alleged to exist under our statute. If, however, we pass to separately consider the two branches of the Amendment, these appellants are not helped.

Upon the question of "due process of law," we have not been favored with a single specification regarding either the Act, or the practice under it. The property being distributed on this proceeding is all in this State; appellants are our citizens and duly appeared and con-

tested the claim of the Commonwealth; all the facts are agreed to; the law applicable thereto has been passed upon by the Orphans' court, all of whose judges are learned in the law, is now under review by this court, and, judging from the record, and the suggestion in the brief, will subsequently be scrutinized by the Supreme Court of the United States. Wherein then have these appellants been deprived of "due process of law?" We agree that "A tax can only be imposed by the State when it has either jurisdiction over a person or jurisdiction over his property;" here it has jurisdiction over both, decedent having been and appellants being domiciled in the State, the latter appearing to the action, all the property now being distributed being within the State, and a valid State statute lawfully imposing the tax. Under such circumstances, it is only when the State does not "provide a fair opportunity for submitting the issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts," that the conclusion reached "is void because in conflict with the due process clause:" *Ohio Valley Water Company vs. Ben Avon Borough*, 253 U. S., 287, 289.

Nor is there any definite allegation as to how the estate is deprived of the equal protection of the laws, though this is asserted over and over again, not only in regard to the refusal to allow the deduction of the items specified, but also, as above stated, in regard to the inclusion of the value of the tangible personal property located outside of Pennsylvania. If the estate has been deprived of the "equal protection of the laws," since all the facts are agreed to, it should be easy to point out exactly how this is so. What has Pennsylvania done

which operates to "deny to any person within its jurisdiction the equal protection of the laws?" These executors and residuary legatees are accorded exactly the same protection given by this statute to every other person within its jurisdiction. Since then "the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied \* \* \* (because) the law operates 'equally and uniformly upon all persons in similar circumstances'": *Billings vs. Illinois*, 188 U. S., 97, 103. It would be of no moment, even if it is the fact, that double taxation may result, so far as regards the tangible personalty located in New York and Massachusetts (*Blackstone vs. Miller*, 188 U. S., 189; *Fidelity & Columbia Trust Co. vs. Louisville*, 245 U. S., 54), for, if this is the case, every one else in like situation will be doubly taxed.

Two of the contentions made by these appellants are entitled to some further consideration. It is clear that neither testator nor any other decedent can, by his will, alter the amount which the Commonwealth is entitled to receive, save to the extent the statute itself specifies, that is, where the gifts are to a "father, mother husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof \* \* \* or from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow (or) passing from an illegitimate child to his mother" (these being commonly called direct inheritances), but two per centum is to be charged upon the value thereof, and where the gifts are to collaterals,—which include all distributees



except those above specified,—five per centum is to be charged upon the value thereof. It necessarily follows that the direction of the present will “that all inheritances \* \* \* taxes \* \* \* shall be paid out of the capital of my residuary estate,” can have no effect in reducing the amount of tax to be paid to this State, but only operates, as between the two classes of gifts, to fix the ultimate payment upon the residuary devisees and legatees, in relief of the others, each of whom, but for that clause, would suffer an abatement of his or her devise or bequest, to the extent of the tax imposed upon its value. If this was not so, and a testator was permitted to reduce the amount payable to the State, by simply charging upon the residuary estate all the taxes paid elsewhere, the sovereign power of the State to impose them as it pleases, subject only to the requirement of equality and uniformity, would have to be made subject also, in this class of cases, to the unrestrained directions of a testator. Under such circumstances, a decedent who had a relatively large amount of property elsewhere, might, by the device stated, greatly embarrass and perhaps largely or wholly defeat the claim of the domiciliary State, even upon the value of the personalty within her own borders.

The inequity of this contention is particularly apparent as to the tax of other States on the realty located therein, the value of which is not considered in determining the amount of our inheritance tax. We fully agree with the contention of these appellants that it would be “quite preposterous to say that the State of Pennsylvania has any jurisdiction to impose a tax upon the tax which is paid to the foreign state upon the transfer of foreign real estate.” In the absence of a

statutory provision so authorizing, however, it would be at least equally preposterous to say that a legatee can have deducted from the actual value of the property in our State, which he inherits, the amount he or some one else pays some other State, upon the realty there situated, and pay our tax only on the difference and this, and not the imaginary levying of "a tax upon the tax which is paid to the foreign State," is the actual situation.

As to the inheritance tax paid to this State, we may further say that the Act discloses no trace of a purpose to permit the deduction of the tax itself, in order to determine the valuation upon which the tax is to be levied. On the contrary, section 16 expressly provides that before paying any legacy the "executor or administrator, or other trustee \* \* \* shall deduct (the tax) therefrom at the rate of two per centum upon the whole legacy (if the inheritance is direct) \* \* \* and at the rate of five per centum upon the whole legacy," if the inheritance is collateral. Hence it is palpably erroneous to say that the percentage to be levied on the "clear value of such estate," as calculated in the manner provided by the statute, should not be levied thereon, but on a sum which is that "clear value" less the tax itself; that is, in the case of direct inheritance on 98 per cent. of that value, and in the case of collaterals on 95 per cent. of it. Doubtless the legislature could thus provide, but it has not, and, so far as we are aware, no other legislature ever has pursued that course.

The next contention is that the tangible personal property given to the widow, and also that which was to become part of "The Frick Collection," is not subject

to this tax, because situated in other States than Pennsylvania. Every one concedes those assets cannot be taxed by this Commonwealth; they are incorporated into the great body of property of other States, and, by reason thereof, are necessarily subject only to their tax laws and other statutes: *St. Louis vs. Wiggins Ferry Co.*, 11 Wall, 423; *Leisy vs. Hardin*, 135 U. S., 100; *Pittsburgh & Coal Co. vs. Bates*, 156 U. S., 577. It is sometimes stated in general terms that the reason for this is that the right to tax is based on the protection accorded (*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, 202; *Tappan vs. Merchants' National Bank*, 86 U. S., 490, 501; *Shaffer vs. Howard*, 250 Fed., 873, cited by these appellants) and hence, as the State of the situs is the only one which can give protection to the tangible property there located, it is argued that no other State can tax it, either directly or indirectly. This contention, founded as it is on general expressions only, is, as usually happens in such cases, plainly fallacious. Even the cases cited do not sustain the conclusion sought to be deduced from them. In *Union Refrigerator Transit Co. vs. Kentucky*, *supra*, which is much relied on by these appellants, the court is careful to say that it is only where "the taxing power is in no position to render these services or otherwise to benefit the person or property taxed" that the tax is objectionable. The other authorities are to the same effect. Surely the State-given right of transmission, by which these appellants seek a present award of \$24,704,126.55, may be said "otherwise to benefit" them.

Moreover, it is said in *Southern Pacific Co. vs. Kentucky*, 222 U. S., 63, 76, that "The legality of a tax is not to be measured by the benefit received by the tax-

payer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden obtainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law." So far as we are aware no well considered opinion, certainly none of the cases cited by these appellants, in any way controverts those principles.

Besides, a multitude of authorities state, and these appellants concede, that this is not a tax on the tangible personalty in New York and Massachusetts, but only on the right of transmission given by the laws of this State, where testator and these distributees alike were and are domiciled. This class of taxes, *Union Refrigerator Transit Co. vs. Kentucky*, *supra* (page 211) says "are controlled by different considerations." It follows that as the right of transmission is State-created, and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of decedent's property wherever located. When this right of transmission, coupled with the terms and conditions mentioned, fastens upon property, or becomes the medium by which its ownership or devolution is asserted, those who claim under the statute must do so *cum onere*, that is, must pay a tax, measured in the way stated; and this it has

been clearly held the Commonwealth has a right to require.

This conclusion is foreshadowed, but not expressly decided, in *Keeney vs. New York*, 222 U. S., 525, 539, where the property was in New Jersey at the time the inheritance tax was collectible and the property received by the distributees. In *Maxwell vs. Bugbee*, 250 U. S. 525, however, the question was squarely raised, and it is said at page 539: "It is next contended that the effect of including the property beyond the jurisdiction of the state in measuring the tax amounts to a deprivation of property without due process of law because it in effect taxes property beyond the jurisdiction of the state. It is not to be disputed that, consistently with the Federal Constitution, a state may not tax property beyond its territorial jurisdiction, but the subject matter here regulated is a privilege to succeed to property which is within the jurisdiction of the state. When the state levies taxes within its authority, property not in itself taxable by the state may be used as a measure of the tax imposed. This principle has been frequently declared by decisions of this court."

There are, moreover, other insurmountable obstacles in the path of these appellants. If it was necessary to obtain the express or implied consent of New York and Massachusetts, before this Commonwealth would be allowed to include, in the total valuation of the estate, the value of this foreign-located tangible personalty (which, of course, it is not), it would not be difficult to show that both were given; the former by the statutes of those States, hereinafter quoted, and the latter in the undisturbed comity existing between the States.

It is said in *Bullen vs. Wisconsin*, 240 U. S., 525: "As the States where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, in a practical sense at least, the law of the domicil is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicil, whatever the limitations of power over the specific chattels may be." To some degree, of course, the rule of comity may be modified by the laws of the State where such personalty is located (see cases cited in *New Orleans vs. Stempel*, 175 U. S., 309, 313); but there is nothing appearing in the legislation of either New York or Massachusetts denying or qualifying the right claimed by this Commonwealth. True, there are provisions in their laws which differ from ours; notably those exempting charities from even this species of taxation, and limiting the proportion of the estate which a testator may give to charity. These relate, however, only to wills of testators there domiciled; the applicable statutory provisions regarding estates of non-resident decedents (showing also, if this is needed, the express consent of those States to the proceedings here), being as follows:

New York: "The validity and effect of a testamentary disposition of real property, situated within the State, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of

such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death."

Massachusetts: Chapter 199, Section 1. "If administration is taken in this Commonwealth on the estate of a person who was an inhabitant of any other state or country, his estate found here shall, after payment of his debts, be disposed of according to his last will, if any; otherwise his real property shall descend according to the laws of the state or country of which he was an inhabitant."

Chapter 65, section 5. "Property of a non-resident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this chapter by the law of the state or country of his residence, shall be subject only to such part of the tax hereby imposed as may be in excess of the tax imposed by the laws of such other state or country, provided that a like exemption is made by the laws of such other state or country in favor of estates of residents of this commonwealth; but no such exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with the law."

We agree, therefore, with counsel for the Commonwealth, that under the circumstances stated "it is mere metaphysics to argue whether the transfer (of the tangible personality under consideration) is effected by virtue of the law of the situs or the law of the domicil; the fact is that tangible personal property passes according to, and in the manner provided by the law of the domicil." We are clear, also, that there is no legal ob-

jection to including the value of the tangible personal property located in New York and Massachusetts; and this conclusion would probably be inevitable also (even if there was no comity existing between those States and ours, and no statutes of theirs on the subject), because of the admitted facts that all of the assets presently being distributed, and now claimed by these appellants, are located in Pennsylvania, and the will of testator, through which their right is derived, requires the tax to be paid out of them. For the reasons stated, no claim to these assets can successfully be made, save upon compliance with our statute requiring the payment of an inheritance tax on the value of all the tangible property there located, as well as on the value of the real and personal property in this State.

The principles stated answer also the contention that the tax cannot be assessed at this time, nor any interest charged, because some disputed and contingent claims have not been paid, and hence, it is not yet known what amount should be deducted for them and for administration expenses in adjusting them. If, however, the Act of 1919, provides that this character of tax shall fall due at a given time after a decedent's death, it must then be paid; and if it fixes a date from which interest shall run, it will begin to run from that date. It is erroneous to assert that interest upon a liability never begins to run until the principal is payable; this is so only when no provision is made on the subject; *Morris vs. Ellwood*, 275 Pa., 319. Many notes, to be paid in the future, carry "interest from date;" and this may always be provided for by contracting parties, and by statute in cases within the State's power to levy and collect. It is only necessary, therefore, to see what the Act of 1919



says as to the time the tax shall become due and payable, and from what date interest shall run, remembering always that the tax is on the estate in its entirety, and not on each devise and bequest, when and as payable, as these appellants erroneously contend.

It must be admitted the Act might have made clearer the answer as to the time when the tax is due, but enough appears to show the legislative intention. Section 14, which relates to the property of resident decedents, provides that "Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court, by bill or petition, to enforce the payment of the same." Section 29 says that "Whenever any tax imposed by this Act upon the transfer of property of a non-resident decedent within this Commonwealth shall have remained due and unpaid for one year, the Auditor General may apply to the court of common pleas of Dauphin County, or of any county in which such property may be situated, by bill or petition, to enforce the payment of the same" or may sue to recover it in "any court of this Commonwealth or elsewhere." And section 38, which relates to both resident and non-resident decedents, provides that "If the tax is paid within three months after the death of the decedent, a discount of five per cent will be allowed. If the tax is not paid at the end of one year from the death, interest shall be charged at the rate of twelve per centum per annum on such tax." \* \* \*

The last sentence above, fixes the fact that interest begins to run at the end of the year; and all the provisions quoted, when considered together, may fairly be construed to mean that the tax is due and payable not later than the end of the year, which time had expired

before the award appealed from was made. The court below did not err, therefore, in directing the payment of the tax on the instant distribution, the assets in which, as well as those not included in the present account, but nevertheless included in the tax valuation, belonging alike to these appellants, who are, by this distribution, awarded a large part of the estate. It may be well to add that sections 20 and 40 of the Act provide an adequate remedy for recovering back any excess payment made to appear by reason of later developments in the estate.

By the Act of July 9, 1919, P. L. 794, it is provided as follows: "All estates in any building, ground, books, curios, pictures, statuary, or other works of art, passing by will from a person seized or possessed thereof to any municipality, corporation or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise, shall not be subject to any collateral inheritance tax for the use of the Commonwealth." No other statute grants exemption from inheritance taxes. By virtue of the provision quoted, the Commonwealth concedes that the value of the land given to the city of Pittsburgh for a public park should be deducted from the "clear value of the estate," in determining the amount upon which the tax should be assessed, but claims that the \$2,000,000 bequeathed for the purpose of keeping the park in order, should not be deducted. The court below erroneously decided otherwise, stating as its reasons that the legacy was given "for the purpose of completing the gift of the land, to effectuate the purpose of the testator," and was no "more than will be

reasonably required to maintain and embellish said land for park purposes."

It will be noticed, however, that the statute nowhere refers to money gifts, but expressly states what subjects shall be exempted from the payment of the tax. It does not say "all estates \* \* \* given for the sole use of the public," but that "all estates in any building, ground, books, curios, pictures, statuary or other works of art," given for such use, shall be exempted, and by no process of reasoning can a money gift be held to come within any of these classes. It follows, therefore, that the \$2,000,000 should not have been deducted in fixing the amount upon which the tax is levied; not only because provisions exempting property from taxation must be strictly construed (*Bank of Commerce vs. Tennessee*, 104 U. S., 493; *Comm. vs. Northern Electric L. & P. Co.*, 143 Pa., 105, 109), but also because the expression of the particular things which shall be exempted, excludes all other subjects: *expressio unius est exclusio alterius*.

Among other personalty owned by testator, located in his dwelling house in New York City, were a Louis XV. Tulip Rosewood Library Table, which was appraised at \$5,500, and a 16th Century French Walnut Cabinet, appraised at \$35,000. The Commonwealth claims that they are "antique \* \* \* furniture," within the meaning of those words in the foregoing quotation from testator's will, and hence were included in the gift to the trustees for the benefit of The Frick Collection, and upon their appraised value a tax of five per cent. should be assessed, although that corporation refused to receive them because they were given by the will to the widow, who, under the decree below, pays a

tax at the rate of two per cent. only. The court below overruled this claim because of an agreement of all the parties interested, including the Commonwealth, that these and the other articles of furniture in testator's New York home were "nothing more than the ordinary furniture and furnishings suitable for such residence." Since that which is "nothing more than ordinary furniture" and "antique \* \* \* furniture" are not or may not be the same, and there is no evidence compelling the conclusion that they are not, we cannot convict the court of error in holding they are not "antique \* \* \* furniture" within the meaning of the will. Moreover, the refusal of "The Frick Collection" to receive them as "antique \* \* \* furniture" necessarily resulted, if they were such, in their falling into the residue, upon which the tax imposed on their value would have been at the rate of two per cent., exactly as it was charged in the decree appealed from.

There is one other matter, not referred to in the assignments of error, but to which our attention is specifically called by a stipulation between the Commonwealth and the parties interested under the will. It appears that testator had purchased what are known as the Fragonard Panels, which were appraised at the value of \$750,000, and the Boucher Panels, which were appraised at the sum of \$150,000; and had "reconstructed the rooms, in which his art collection was to be exhibited, so as to contain said panels, and they were placed therein and are now there, being applied to the walls of the rooms." Whether or not the result of this was to make them a part of the realty, under the laws of New York, we do not know, except as we may infer the negative, since apparently their value was included in

fixing the amount upon which the tax was assessed, and no assignment of error objects to this. Because of the doubt on the subject, however, and of testator's very generous disposition of his property, for the benefit of the public generally, the order we enter will be without prejudice to the rights of the parties in interest to make application to the court below for a reopening of the decree, and a determination of this question, notwithstanding our general conclusion as to the proper inclusion of the value of the personal property directed to be conveyed to "The Frick Collection."

The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the city of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals [without prejudice, however, to the rights of the parties in interest to apply for a reopening of the decree, so far as it includes the value of the Fragonard Panels and the Boucher Panels, in determining the amount of the tax]; the costs on all the appeals to be paid by the estate.

Frazer, J. files a dissenting opinion.

Subsequently, on June 23, 1923, on motion of appellants, the Supreme Court modified the judgment in these cases, by eliminating the portion enclosed in brackets, making it read as follows:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the City of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."

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**Dissenting Opinion in the Supreme  
Court of Pennsylvania.**

IN THE SUPREME COURT OF PENNSYLVANIA  
Western District.

IN RE  
ESTATE OF HENRY C. FRICK,  
deceased.  
APPEAL OF  
COMMONWEALTH OF PENN-  
SYLVANIA, *et al.*

Nos. 39, 40, 42, 43, 44  
and 45, October Term,  
1923.

Appeal from the O. C. of  
Allegheny County.  
Filed April 30, 1923.

DISSENTING OPINION.

FRAZER, J.:

A question is raised in this proceeding as to the right of the state to tax that part of decedent's property paid to the United States government in the form of an estate tax. There can be no doubt as to the meaning of the Act of 1919. The legislature plainly intended, by Section 2, to prevent the deduction of such tax before assessing the state transfer tax. The statute was passed to overcome the decisions of this court in *Otto's Estate*, 257 Pa., 155 and *Knight's Estate*, 261 Pa., 537, wherein we held that, in computing the net value of the estate, taxes due the federal governments and foreign states should be deducted. The Act of 1919, on the point here involved, was construed by this Court in *Kirkpatrick's Estate*, 275 Pa., 271. The writer dissented from the conclusion reached in that case by the majority of the Court, but filed no opinion setting out

his reasons for such dissent. In view of the presentation of the same question in this proceeding, and of the further fact that this case will probably be taken before the Supreme Court of the United States, it seems proper that reasons for such dissent be briefly stated.

The power of the United States to tax is limited only by the extent of the necessity for raising money to meet the various needs of government. "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." *McCullough vs. Maryland*, 17 U. S., 315, 429. The opinion in which this language was used firmly established the principle that a state is without power to tax an instrumentality of the Federal Government—a principle which has been constantly followed and applied in the century elapsed since the decision there rendered. The general rule is, therefore, that states are without authority, by taxation or otherwise, to in any manner control or interfere with the operations of the Federal Government, or the instrumentalities by which that government is carried on. The latter is supreme within its sphere of action, and, where there is inconsistency or conflict, the state laws and regulations must yield for the benefit of the whole. If the State of Pennsylvania is permitted to tax property appropriated by the Federal Government under its taxing power this, in effect, permits the state to collect revenue from property set aside for the use of the United



States. If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States. The federal tax is an estate tax payable out of the estate of decedent and is imposed, regardless of the will of the decedent, on the gross estate, after deducting designated items: *Knight's Estate, supra*. The right of the United States to first collect its tax seems to be conceded and if the right of the United States to tax includes the right to tax to any amount, or to take the whole where necessary, the result of holding that the federal tax should not be deducted before computing the state tax might be to impose a combined state and federal tax exceeding the value of the property. Let us suppose, for example, that the federal tax is sixty per cent. of the estate and the state tax an equal amount. The result would be that the estate would owe in taxes twenty per cent. more than its value, regardless of what that might be. While it may be argued that this situation would not be likely to arise, and indeed presents a very remote possibility, yet it shows the logical result of permitting two or more sovereign powers to levy a tax on the whole of a decedent's estate. The fact that the right of succession is a state right and not within the control of the federal government does not give to the state the power to take away from the federal government the subject matter of the tax, as was suggested in the opinion of the majority of this

court in *Kirkpatrick's Estate*, *supra*, inasmuch as, under the federal law, the tax is on the estate as a whole and not on the transfer to the beneficiary and the justification for the tax is the ending of the estate by death rather than the beginning of a new estate by succession: *Knowlton vs. Moore*, 178 U. S., 41.

The majority opinion holds exempt the land given to the City of Pittsburgh as a public park but imposes a tax of 5 per cent. on the fund of \$2,000,00 given for the purpose of taking care of the property. It is conceded the sum so given is not in excess of the amount necessary to properly improve and maintain the park and that, in absence of such gift, the city would be obliged to tax its citizens to provide for such maintenance. It is true the Act of 1919 refers in its exemptions only to "estates in any buildings, ground, books, curios, pictures, statuary or other works of art" given for public purposes and does not specifically mention funds left for maintenance of such objects. Any distinction between the gift of land for a park and the gift of a sum of money for its maintenance or for the purchase of property to be used as a park, is but an arbitrary one and not based on a real difference in the purposes or object of the gift. Granting the power of the legislature to make an arbitrary distinction if it sees fit to do so, the question is whether this has been done in the Act of 1919.

If the statute in question is to be construed strictly, then the majority opinion of the court is undoubtedly right. The argument for such strict construction, however, is based on prior decisions rendered in cases involving, not the question of exemption of public property, but exemption of private property held for charit-

able or other purposes, bringing it within the laws providing for exemption from taxation. There is a clear distinction in the law applicable to these two classes of cases. Public property is never subject to tax laws and no portion of it can be without express statutory enactment. Accordingly, no exemption is needed for public property held as such: *Poor Directors vs. School Directors*, 42 Pa., 21; *Pittsburgh vs. Sterrett Sub-District School*, 204 Pa., 635, 641. Exemption is the rule and taxation the exception. In considering legislation of the character here in question, it is always to be presumed that general language is used with reference to taxable subjects, and the property of municipalities does not fall within the ordinary designation of taxable subjects: *County of Erie vs. City of Erie*, 113 Pa., 360. To levy a tax on such property would merely mean the assessment of new taxes to meet the liability which the city had imposed upon itself and no benefit would accrue. On the contrary, an additional liability would result, measured by the expenses of imposing and collecting the tax. For this reason, it is not reasonable to conclude that a law, however general, was intended to reach property held by the public for public purposes. While such property may be taxed if the legislature sees fit to provide, the intention must be clearly expressed or necessarily implied. On the other hand, as to private property, even though held for private charities and therefore exempt as such, a different rule applies. In such case liability to taxation is the rule and the person claiming exemption must point to an express statute granting relief from the burden. An illustration of this

is found in *Robb vs. Philadelphia*, 25 Pa. Superior Ct., 343, which followed the general principles established many years ago by this court. In the course of the opinion in the case just cited, it was said (Page 346): "There is this distinction for the purpose of taxation between property owned by a church and that owned by a municipality and devoted exclusively to public purposes. The church must show ground on which its property is exempt. The public property of a municipality cannot be taxed unless there is the clearly manifest legislative intention that it shall be subject to the imposition. Property belonging to the state and its municipalities, and which is held for governmental purposes, is presumed to be exempt, and is not included in any designation of property to be taxed however sweeping, unless the statute authorizing the tax expressly provides." Citing *Pittsburgh vs. Sterrett Sub-District School*, *supra*, wherein appears an elaborate review of the authorities of our own and sister states.

It is also to be noted, as having an important bearing on this question, that the settled policy of the state is to exempt from taxation "institutions of purely public charities," and that they "may be exempt by necessary implication of law;" *Mattern vs. Canevin*, 213 Pa., 588, 589-90, construing Art. IX, Sec. 1, Constitution of Pennsylvania.

Applying the foregoing principles to the present case, it seems a narrow construction of the act in question to exempt existing physical things devised for public purposes, such as buildings, ground, books, curios, works of art, etc., and to refuse to exempt a monetary gift made either for the purpose of purchasing such

objects or maintaining those already in existence. The purpose and spirit of the law applies to the money equally with the objects enumerated. Bearing in mind the principles above stated, showing the policy of our law, it seems to the writer of this opinion that the Act of 1919 should be construed to include money left by will to maintain the charitable objects there exempt.

Entertaining these views on the questions briefly stated above, the writer enters his dissent from the opinion of the majority.



**BRIEF IN SUPPORT OF PETITION.**

Mr. Frick was born in the State of Pennsylvania, and Pittsburgh was his domicile. His estate at the time of his death amounted approximately to one hundred million dollars. By his will he left about three-fourths of his entire estate to charity—to hospitals, to universities, to the creation and endowment of a great park in Pittsburgh, and to the incorporation of a wonderful art institute in New York City, which should be forever free to all people, and to which he gave his New York residence, appraised at over \$3,000,000, his art collection, inventoried at over \$13,000,000, and an endowment fund of \$15,000,000.

In Mr. Frick's will he provided that all inheritance taxes should be paid out of his residuary estate. He bequeathed 87 per cent. of the residuary estate to hospitals and colleges and 13 per cent. to his daughter.

When Mr. Frick died he owned property, real and personal—some tangible, some intangible—in eighteen states and in the Dominion of Canada.

At once the United States and these nineteen other sovereignties stretched out their hands for money, and all sought to exact as taxes the last penny possible from the money which Mr. Frick had left to these charities. The estate has settled (sometimes by compromise, sometimes by litigation) with all these sovereignties except the United States and State of Pennsylvania. The executors paid the United States \$6,338,898.68, which they admitted to be due to it, and to the State

of Pennsylvania \$1,978,949.71, which they admitted was due to it. The United States claims a further sum approximating \$3,000,000, which is still under discussion with the Department of Internal Revenue. A part of this is directly involved in this case and awaits its decision, since one of the vagaries of the United States inheritance tax law, as it is administered, is that, in cases where the taxes are thrown upon residuary estates which are bequeathed to charity, the more tax you pay to the several states the more tax you have to pay also to the United States. The State of Pennsylvania claims additional estate tax to the amount of \$1,185,158.14, with interest from December 2, 1920. The Pennsylvania court of last resort has decided that this amount is due. To review this decision a writ of error has been sued out; and it is to review this decision also (in case a writ of error is not the proper remedy) that a *certiorari* is now prayed for.

The petitioners believe that this additional tax should not be paid, because the Pennsylvania Transfer Inheritance Tax Act as construed by the court violates the Constitution of the United States.

The broad question involved is one of jurisdiction or power. The petitioners contend (1) that Pennsylvania cannot levy a transfer inheritance tax on tangible articles of personal property which are located in other states; (2) that in ascertaining the taxable value of the estate which is subject to inheritance taxes in the state of Mr. Frick's domicile, the "paramount" taxes which have to be paid to the United States and to other states must be deducted—in this case the United States estate tax and the estate or succession



taxes levied by states other than Pennsylvania on the transfer of shares of capital stock of corporations of other states than Pennsylvania; (3) that in this case, where all inheritance taxes are cast by the terms of the will on the residuary estate, before the tax is calculated a deduction from the estimated value of the estate must be made of the inheritance taxes paid to other states on real estate located in said states and of the inheritance tax paid to the State of Pennsylvania on the general and specific legacies and devises.

After the opinion in this case was handed down by the Supreme Court of Pennsylvania, deciding these questions against your petitioners, an application was made to that Court for the allowance of a writ of error. The petition was accompanied by a petition for a modification of the decree and, as required by the rules of the Pennsylvania Supreme Court, by a petition for a re-argument of the case. On the 23rd day of June, 1923, the Court entered an order amending its prior decree, and made an order dismissing the petition for a re-hearing and also made an order allowing a writ of error from the Supreme Court of the United States. Subsequently the writ of error was formally allowed by the Chief Justice of the Supreme Court of Pennsylvania, a supersedeas bond approved by him, and the writ of error was sued out and filed in this Court at this number and term. There are four appeals from this decision of the Supreme Court of Pennsylvania pending in this court. A stipulation has been filed in this case that this application for *certiorari* may be determined on the record at No. 442 October Term of this Court, and a certified copy of the record has been filed in each case.

In the judgment of petitioners' counsel, this case falls within the class of cases reviewable by a writ of error.

The provision of the Pennsylvania statute imposing a tax on foreign tangibles is this:

"A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situate within this Commonwealth or elsewhere." (Act approved June 20, 1919, Article I, Section 1, P. L. 521, West Publishing Company's Compilation of Pennsylvania Statutes, Section 20465).

The provision of the Pennsylvania inheritance transfer tax act which relates to the tax upon the paramount taxes is:

"In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." (Act, approved June 20, 1919, Article I, Section 2, P. L., p. 522; West Publishing Company's Compilation of Pennsylvania Statutes, Section 20466.)

The petitioners' contention in the case is that this statute violates their rights under the constitution and laws of the United States.

It is submitted that under the decisions of this Court this case is reviewable by a writ of error, which was properly granted. *Dahnke-Walker Milling Co. vs. Bondurant*, 257 U. S., 282; *Eureka Pipe Line Co. vs. Hallanan*, 257 U. S., 265; *United Fuel Gas Co. vs. Hallanan*, 257 U. S., 277.

The facts are entirely different from the facts in *Dana vs. Dana*, 250 U. S., 220, a case for which this court held *certiorari* to be the correct remedy. In the *Dana* case the writ of error was dismissed because neither the validity of the statute nor the validity of any authority exercised under the state was drawn in question. The court below, the Supreme Judicial Court of Massachusetts, had decided the case on the view which it took of the question whether the property sought to be taxed was real estate or personal property. This court, therefore, held that the Federal question could be raised only on *certiorari*.

Inasmuch, however, as the opinion of counsel may be erroneous on the question of which remedy is the proper one in this case, a petition for a *certiorari* also has been filed.

This brief is filed for the purpose of showing the court that there are Federal questions of public and general importance involved in the case which have never been decided by this court and on which there are conflicting decisions by State Courts.

**POINT I.****The Legislature of Pennsylvania Has No Power to Tax the Transfer of Tangible Chattels Situate Beyond Its Boundaries.**

The State of Pennsylvania has, by act of Assembly, undertaken to tax all property of a resident decedent, real and personal, wherever situated.

A transfer inheritance tax amounting to more than \$600,000 has been levied on tangible chattels which belonged to Mr. Frick at the time of his death, and were then located in New York and Massachusetts.

These tangibles consisted of (a) the art collection, valued at more than \$13,000,000 and located in Mr. Frick's house on Fifth avenue in New York City; (b) furniture, household supplies, etc., located in said house; (c) pictures, furniture and furnishings—live-stock, agricultural implements, etc., located at his estate and summer home at Pride's Crossing, Massachusetts.

So far as the Massachusetts tangibles are concerned upon which the State of Pennsylvania has levied a transfer inheritance tax based on a valuation of \$318,429.25, it has been stipulated that they "consisted of nothing more than the ordinary furniture and furnishings suitable for such residences and estates."

The art collection had an inventoried value of \$13,132,391, and upon this the State of Pennsylvania levied a 5 per cent. tax. This art collection, owned by Mr. Frick at the time of his death, consisted of a great many art treasures, mostly antiques of European and Asiatic origin—paintings, rugs, furniture, bronzes, porcelains, etc. Some of the articles, such as panel pictures, were of so unusual a character as to require special rooms to be constructed to hold them. The panel pictures were applied to the walls.

The art collection was at the time of Mr. Frick's death located in the City of New York in the building occupied by him at that time as one of his residences. The building was completed and first occupied by Mr. Frick in 1914, and in 1915 Mr. Frick made his will, in which he made provision for carrying out his intent that the building and its contents should become a permanent public gallery of art to which the public should "forever have access." Subject to the right of Mrs. Frick to occupy the land and building as one of her residences so long as she desired to do so, the land was devised to a corporation to be incorporated by the State of New York, and to be known as "The Frick Collection." Mr. Frick by his will bequeathed all the works of art constituting the collection to this corporation. He provided in his will and made it a condition of the bequest that these chattels should be forever held, maintained and preserved in this house. He bequeathed to the corporation \$15,000,000 also as an endowment fund.

There is no room for fictions or theories as to what the *situs* of these chattels was and is. Every one of

the articles which constitute this collection has a real physical existence and necessarily has a *situs* as surely as the building has. Indeed by the terms of Mr. Frick's will the articles never can be removed to any other *situs*.

In considering a question of this kind, one must bear in mind that where tangible chattels are located in a sovereignty other than that of the decedent's domicile, they must be administered by an ancillary administrator or executor of the country of their *situs*, and that not only have the local creditors the right to be first paid before anything is transmitted to the state of the domicile, but resident specific legatees, and in some instances even general legatees residing in the country where the chattels are, have the right to have their legacies paid before the balance is remitted to the principal administrator.

*Hervey vs. Richards*, 1 Mason, 381.

In this case Mr. Justice Story says that unquestionably the specific legatee is entitled to claim in the jurisdiction where the chattel is, although there be only an ancillary administrator there. So it is perfectly clear in this case that the courts of New York will see to it that this legacy to the Frick Collection is kept in the State of New York. It is the duty of the corporation, the Frick Collection, also, to see that these chattels remain in New York and are distributed to it. And the State of Pennsylvania has no way by which it could get this collection into the State of Pennsylvania and administer it there.

The law of England is the same.

*In re Lorillard, Griffiths vs. Catforth* (1922),  
2 Ch., 638.

The testator, who was domiciled in New York, left assets in England, where there was an ancillary administration. The legatees under the will resided in England, and upon claim being made by the principal administrator in New York that the assets after payment of the British debts should be remitted to him, the application was denied by the English Court of Chancery, which held that the resident beneficiaries under the will had the right to have the balance in the hands of the ancillary administrator distributed to them. Lord Justice Warrington says:

"The persons entitled to the unadministered residue are in this country, and the Court will not order these moneys to be sent to an administrator abroad."

The proposition contended for by petitioners is that the State of Pennsylvania cannot impose an inheritance tax upon the transfer of Mr. Frick's tangible personal property, tangible chattels which were outside the State of Pennsylvania, and which, consequently, were not situated in the State of Pennsylvania. The obligation imposed upon a state by the Fourteenth Amendment to the Constitution of the United States requires that the subject-matter of the state's action shall be within the jurisdiction of the state, that is, within its territory. This proposition is so thoroughly established that a justification of the tax imposed by

the State of Pennsylvania in the instant case must be founded either (a) upon the fiction expressed by the words "*mobilia sequuntur personam*"; or (b) upon the proposition that the title to decedent's tangible property outside of the state passes by virtue of the laws of the state of the domicile, and that, therefore, both the state of the domicile and the state of the *situs* can tax; or (c) that because there is money being distributed by the Pennsylvania courts to beneficiaries who must come into Pennsylvania to get their share in the distribution, the State of Pennsylvania can impose a tax upon the property in Pennsylvania and determine the amount of the gross value of the estate by adding to it the property outside the state, which it cannot tax.

(a) In view of the decisions of this court and of the Supreme Court of Pennsylvania, it could not be successfully contended that the fiction *mobilia sequuntur personam* authorizes the tax, because, under the decisions of the court the fiction must yield to the facts. (*Eidman vs. Martinez*, 184 U. S., 578—see opinion of Mr. Justice Brown, pages 581-582; *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194—see opinion by Mr. Justice Brown, page 206; *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S., 395—see opinion by Mr. Justice Moody, page 402.)

The Supreme Court of Pennsylvania did not attempt to sustain this contention.

(b) The second proposition, that the power of the state to tax could be sustained because the succession to articles of personal property passes under the laws of the state of the domicile, is, we submit, unsound.



While the Supreme Court of Pennsylvania discusses this point, it does not base its decision upon it.

*Tangible* personal property is subject to the dominion of the sovereignty where it is situated. The question who is to be recognized as its owner during the life of the owner is a question solely for the sovereignty where the property is located. To whom the title passes when its owner dies is determined by the law of that sovereignty alone, and does not depend in any degree whatsoever upon the law of any other sovereignty. The question in this case is the validity of Mr. Frick's will in New York and Massachusetts. Is his will valid under the laws of those states? There must be a compliance with the laws of those states before the will will pass title to tangible property in those states. This is true, even though the laws of those states say that the will of a non-resident *executed* in the manner required by the state of his domicile is valid in New York and Massachusetts.

In *Keeney vs. New York*, 222 U. S., 525, Mr. Justice Lamar says (page 537):

"The real estate and tangible property in Texas were not within the taxing jurisdiction of the State of New York and there was no effort to tax the transfer of that property."

While this statement of Mr. Justice Lamar's is only an expression of his opinion and was not necessary to the decision of the case, it is an expression of opinion in the only case, we believe, that ever reached this court in which there was any question as to the power of

the state of the domicile to levy an inheritance tax upon tangible chattels located in another state.

The Pennsylvania Supreme Court, in its discussion of this point in its opinion, seems to imply that *Bullen vs. Wisconsin*, 240 U. S., 625, is an authority for the proposition that the State of Pennsylvania could impose this tax upon these tangible chattels. In *Bullen vs. Wisconsin*, however, the property consisted entirely of *intangible* property; and when Mr. Justice Holmes in his opinion speaks of the law of the domicile as being needed to establish the inheritance, he is speaking of *intangible* articles of personal property, and is referring to the cases of "contracts and stock" as illustrative of the point.

There are two decisions of state courts of last resort in which it was expressly held that inheritance taxes can not be imposed by the state of the domicile of the decedent upon tangible chattels situate in another state.

In *Weaver's Estate*, 110 Iowa, 328, it was held that an inheritance tax could not be imposed by the State of Iowa upon a herd of cattle which was in Missouri.

In *State vs. Brevard*, 62 North Carolina, 141, the testator was domiciled in North Carolina but owned property, consisting of realty and personalty, in the State of Alabama. Among his property in Alabama was the Vesuvius Furnace with all its appurtenances, which doubtless included some personal tangibles, but which the report of the case expressly shows

included a number of negro slaves. It was held that this tangible property could not be taxed for inheritance tax purposes in North Carolina, the state of the domicile. The opinion is based upon the reasoning in the very exhaustive opinion of the court in the earlier case of *Alvany vs. Powell*, 55 North Carolina, 51.

The same principle is laid down in *Josylin's Estate*, 76 Vermont, 88. In that case the court held that the State of Vermont could not levy an inheritance tax upon an indebtedness due to a resident decedent from a non-resident, because the real *situs* of the thing was the state of the debtor, and the debt could only be collected by means of the laws of that state. Judge Stafford says (page 92) :

"\* \* \* this portion of the estate did not pass by force of our law at all, for that law had no force in the domicile of the debtors. It passed by force and virtue of the law of those jurisdictions. If they recognize our law as the rule to be followed in distributing the personal estate, just as they would have recognized the law of the place where a contract was made as the law of the contract, that did not make it that the property passed by force of the law of this state, but only that it passed in the same manner as it would have passed by our law."

And again at the bottom of page 93 :

"The hand that passes the estate from one generation to another retains a portion as a sort of toll for the service. Which sovereignty is that? Clearly the one which has the right to say who shall succeed."

The only case cited by the State of Pennsylvania, in which a court of last resort has decided that a state may levy an inheritance tax upon tangible articles outside its boundary is *Matter of Estate of Swift*, 137 N. Y., 77 (1893). This is a very curious case; for the only opinion filed is an opinion written by Mr. Justice Gray to sustain the proposition that the tax was invalid. But he says at the end of his opinion that his brethren do not agree with him, and that therefore the decision of the court below is affirmed. So the case is of very little authority. All that we know about it is that the judges of the Court of Appeals of the State of New York decided that the tax was valid, but gave no reason whatever for their decision; while the only opinion filed does demonstrate quite conclusively that such articles are not taxable.

While it was claimed by the respondent's counsel in their brief before the Supreme Court of Pennsylvania that there were two other cases (*Carpenter vs. Pennsylvania*, 17 Howard, 456, and *Hartman's Estate*, 70 N. J. Eq., 664), in which state inheritance taxes upon tangible chattels located outside of the state had been sustained by the courts, an examination of the cases themselves shows that they do not support the contention of the respondent.

In the report of the case of *Carpenter vs. Pennsylvania*, 17 Howard, 456, the only reference to what the personal property was is a statement of Mr. Justice Campbell, made in delivering the opinion of this court, on page 461, which is as follows:

"In that settlement the executor represented

that a portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth \* \* \* .”

There surely is nothing here to show that any of the property involved was *tangible* personal property. The case was an appeal from a decision of the Pennsylvania Supreme Court in *Short's Estate*, 16 Pa. St. Reports, 63. The statement of facts in the report of that case on page 63 states explicitly that decedent “owned a large amount invested in stock and corporations in other states, some bonds of the State of Kentucky, etc., in all exceeding half a million of dollars, and above \$1000 of cash in a bank in New York.” This certainly discloses no *tangible* chattels located outside of the state. The case is therefore not authoritative for the point on which it is cited; particularly in view of the fact that there is not even any discussion in the opinion of either the Supreme Court of Pennsylvania or the Supreme Court of the United States with reference to the point involved in the instant case.

In *Hartman's Estate*, 70 N. J. Eq., 664, the only point discussed or involved in the decision was whether Mrs. Hartman was a citizen of New York or of New Jersey. It was held that she was a citizen of New Jersey, and that therefore New Jersey could tax on the theory of that being her domicile. There is nothing in the report of the case to indicate that there was any tangible personal property belonging to her located in New York, except that, as she is said to have owned a residence in New York in which she lived, one might perhaps infer that there was furniture in the house, and also infer

that the furniture was assessed for inheritance tax purposes. Likewise there is some reference to her having taken her horses and carriages to Long Branch in the State of New Jersey in the summer, but there is nothing to show whether she kept them in New York City or elsewhere in the winter. It is perfectly clear that there is nothing in the case to show that New Jersey did tax these New York tangibles; and it is also clear that no question was raised by counsel or considered by the court as to whether such tangibles, if they were assessed, were or were not taxable. The sole question, as we have stated above, discussed and decided by the New Jersey Court was whether her domicile was in New Jersey or in New York.

It is a general fundamental proposition, frequently laid down by this court, that the power to tax is correlative with the power to protect; that where a thing is situate outside the territory of the state, the sovereign has no power to protect and cannot tax it.

See *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, particularly Mr. Justice Brown's opinion, beginning at page 202.

*Tappan vs. Merchants National Bank*, 86 U. S., 490, particularly Mr. Chief Justice Waite's opinion at page 501.

These chattels located in the State of New York were entirely outside of the State of Pennsylvania and beyond its power to protect. How they should be dis-

posed of, as well as how they should be protected, was entirely within the jurisdiction of New York.

(c) The decision of the Supreme Court of Pennsylvania is founded upon the third proposition, which is:

That because the property which is being distributed in this proceeding is all in this state, there can be no Federal question involved. The proposition is thus stated by Mr. Justice Simpson (page 36, this book):

"It follows that as the right of transmission is State-created and hence the Commonwealth can legally say and does say, upon what terms this testator may give and his legatees may receive, property within her jurisdiction, for the reasons already specified, she may declare that the only basis upon which her conditions can be met, shall be by payment of a tax upon the value of the decedent's property wherever located."

Under this rule the State of Pennsylvania can levy upon the property which is within her jurisdiction a transfer tax which shall be based upon the value of decedent's property wherever situate; and that, of course, means upon real estate as well as upon tangible personal property. There is no more reason for excluding the one than the other.

This reasoning has all the charm of novelty. The Supreme Court of Pennsylvania relies for support of this conclusion on two decisions of this court. The first one is *Keeney vs. New York*, 222 U. S., 525, in which

Mr. Justice Simpson says the conclusion "is foreshadowed but not expressly decided." We are at a loss to see how it is foreshadowed by the opinion in the *Keeney case*, which we have quoted above, in which Mr. Justice Lamar says distinctly that *tangible* articles located outside the state of the domicile cannot be taxed.

The other case relied on is *Maxwell vs. Bugbee*, 250 U. S., 525, in which Mr. Justice Simpson says the question was fairly raised, and quotes from the opinion of this court as follows:

"When the state levies taxes within its authority property not in itself taxable by the state may be used as a measure of the tax imposed."

It is apparent that the Supreme Court of Pennsylvania misapprehended the case this court had before it and the meaning of the language used. In *Maxwell vs. Bugbee* the question raised was as to the inheritance tax upon *the estate of a non-resident*. The tax was levied with respect only to the local real and tangible personal property in the State of New Jersey, and with respect to stock of New Jersey corporations and national banks located in the State of New Jersey. The provision of the state tax law which was in question is the provision requiring the tax levied to bear the same ratio to the entire tax that would be imposed under the act if the decedent were a resident and all his property were located within the state as his property within the state bears to the entire estate wherever situate, specific devises or bequests of prop-



erty within the state being excluded from the computation.

The complaint of plaintiff in that case was that the act inflicted an unequal tax, which bore more heavily on the estates of non-residents than on the estates of residents. When one reads Justice Simpson's excerpt in connection with what follows it in Justice Day's opinion and in connection with Justice Day's references to authorities, it becomes clear that the excerpt does not support the proposition for which it is cited by the Supreme Court of Pennsylvania. Thus Justice Day says (page 539) :

"In the present case the State imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so within limitations which do not really make the tax one upon property beyond its jurisdiction, the decisions to which we have referred clearly establish."

The instant case involves no such question. It involves the proposition that the state of the domicile may add to that which is within its jurisdiction the value of that which is beyond its jurisdiction and then tax the whole. The Pennsylvania act does "really make the tax one upon property beyond its jurisdiction."

Again, this point involves the question of the meaning of the New York and Massachusetts statutes.

Undoubtedly the States of New York and Massachusetts have the power to decide what laws shall be

good to pass title to tangible chattels in those states and upon whom the title shall devolve; and we contend that they have done so.

For example, Section 17 of the *Decedents' Estate Law of the State of New York* (Book 13, *McKinney's New York Laws*, page 48), Record 246 a, says that no person having a wife, child, husband or parent shall by his last will bequeath to charities more than one-half part of his estate, and that the bequests to charities shall be valid to the extent of one-half and no more. Mr. Frick left more than one-half of his estate to charities. Is his will good in New York in the face of this statutory provision?

The Supreme Court of Pennsylvania says that these provisions "relate, however, only to wills of testators there (in New York) domiciled." (See opinion, this book, page 38). The Court of Appeals of the State of New York has decided exactly the contrary, to wit, that it applies to property situate in New York of which a citizen of another state died seized. It has decided that if the bequest to charities made by the will of a citizen of New Jersey exceeds more than one-half of the net value of his entire estate, real or personal, wherever located, the charitable bequest as to all the property located in New York is void and the property goes to the heirs (*Decker vs. Vreeland*, 220 N. Y., 326). It is the law of New York that is going to decide who owns this Frick Collection; and if the question comes up, it will decide that Mr. Frick's will was valid in spite of this provision because his widow and children saw fit to ratify the bequest after his

death; and this is so because that is the law of the State of New York (*Amherst College vs. Ritch*, 151 N. Y., 282).

So too, there are many other statutes, both of New York and of Massachusetts, introduced into the record in this case which show that the validity and effect of Mr. Frick's will is to be determined by the laws of those states.

**POINT II.****The State of Pennsylvania Has No Power to Levy a Transfer Inheritance Tax Based on a Valuation of the Estate Which Fails to Deduct the Paramount Taxes—The Paramount Liens Imposed by the United States and by the States Where the Property is Located.**

Everyone must admit that the taxing power of the United States Government is supreme; therefore, all that was left of Mr. Frick's estate the transfer of which the State of Pennsylvania could tax was the remainder after the Federal tax was paid.

Equally so, as Mr. Frick owned stock in the Atchison, Topeka & Santa Fe Railroad, a corporation of the State of Kansas, and the Pennsylvania executors could not get possession of, or exercise any dominion over, the shares until they had paid the Kansas inheritance transfer tax amounting to \$353,887.04, the State of Pennsylvania had no power to tax the estate on a valuation of this Atchison stock at its stock exchange quotation the day Mr. Frick died, disregarding the paramount lien of the State of Kansas. The same thing applies to all the "foreign" stocks.

Mr. Justice Frazer of the Supreme Court of Pennsylvania, in his dissenting opinion in this case, points out the reason why the State of Pennsylvania can-

not impose an estate tax upon the whole estate without deducting the Federal tax: because to do so does, in truth and fact, compel the residuary legatee to pay a tax upon the paramount tax which they have already paid to the Federal Government.

Justice Frazer says (this book page 49) :

"If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States."

Mr. Justice Sweeney, in his dissenting opinion in *Hazard vs. Bliss*, 113 Atlantic, 469 (Rhode Island Supreme Court, May 4, 1921), expresses the same idea as follows:

"By operation of Federal law the net estate left by the decedent has been depleted by the amount of the tax and the deceased was deprived of the right to transfer so much of his net estate as would be required to pay the Federal Estate tax. The decedent had the right to dispose of only so much of his net estate as would be left after the deduction and payment of the Federal tax and the residuary legatee had the right to receive from the decedent only so much of his estate as would be left after the deduction and payment of the Federal Estate tax."

It is not necessary at this time to call the attention of this court to the long line of cases, beginning with *McCulloch vs. State of Maryland*, 17 U. S., 315, but we desire to mention *Flaherty vs. Hanson*, 215 U. S., 515, in which it was held that the requirement of a North Dakota statute, that the holder of a United States liquor license must record it in a certain manner in the State of North Dakota and pay a recording fee of \$25, was an invalid interference with the taxing power of the United States.

It seems to us that there is no escape from the proposition that when a state undertakes to levy an inheritance tax upon the full value of a decedent's property without deducting the paramount United States tax it assumes an increase in the amount of the estate which would pass from the decedent to his heirs equal to the amount of the Federal tax, and, consequently levies a tax upon the Federal tax.

Just so with reference to the paramount taxes which are imposed by other states and are liens upon stock of corporations of those states. We turn, for an example, to the Atchison stock held by Mr. Frick. The State of Kansas had upon that stock a paramount lien amounting to \$353,000, which attached at once upon Mr. Frick's death. It was just as much a lien upon the stock as if the stock had been pledged with a Kansas bank as collateral for a loan. The value of the stock to Mr. Frick's estate in Pennsylvania on the day he died could not be more than its market value on that day less the \$353,000 of paramount Kansas taxes. And when the State of Pennsylvania undertakes to disre-

gard the Kansas tax it really imposes an inheritance tax upon the Kansas tax.

The California court of last resort has reached a conclusion in direct antagonism to the Pennsylvania Supreme Court in the instant case: *Re Estate of Henry Miller*, 195 Pacific, 413 (1921). Mr. Justice Olney says at page 417:

"The authority of the state having actual control of the subject-matter, either because it is personal property within its limits, or because, as in this case, it is the stock of one of its corporations, is, of necessity, the superior. The state of the decedent's domicile can deal with the property only after the requirements of the state of its actual *situs* are satisfied. Putting it in another way and concretely, the stock of Henry Miller in the Nevada corporation comes into his California estate, there to be administered upon and taxed, only after the requirements of Nevada are complied with, and the only thing over which California secures authority is what remains after Nevada has taken its tax."

### POINT III.

**As in This Case, Under Mr. Frick's Will All Inheritance Taxes Are Thrown Upon the Residuary Estate, and as, Regardless of the Will, All Federal Estate Taxes Are by the Law Cast Upon the Residuary Estate, and as the Supreme Court of Pennsylvania Has Decided That This Is an Estate Tax and the Same Result Would Be Reached by the Pennsylvania Statute, It Is Contended that the Taxation of the Estate Passing to the Residuary Legatees, Without Deducting the Inheritance Taxes Paid Other States on Real Estate Located in Other States and the Transfer Taxes Paid the State of Pennsylvania on the General and Specific Legacies and Devises, Is Unconstitutional.**

The question is, Can Pennsylvania not only tax the estate transferred, but also tax the taxes?

In the instant case, where the burden of all taxes is thrown upon the residuary legatees and directed to be paid out of the residuary estate, the Pennsylvania executors paid the inheritance taxes due other states on all the foreign real estate. The question is, Can the State of Pennsylvania make the residuary legatees pay a tax on the estate without a deduction of the



taxes paid on the foreign real estate? Using as an argument an illustration: Let us assume that a resident of Pennsylvania dies possessed only of foreign real estate. The heirs pay the tax in the foreign state upon the transfer of the real estate and go into possession. Under what power and by what process can the State of Pennsylvania collect a tax imposed upon the taxes paid to the foreign state? It is only from such estates as have other assets in Pennsylvania that the State of Pennsylvania may ever hope to collect such a tax. Does this give to estates that have assets in Pennsylvania the equal protection of the laws? Does not this statute essentially lack uniformity in that it collects from estates of residents a tax upon foreign assets where the estates have assets in Pennsylvania, and yet collects no tax from the estates of residents which consist entirely of foreign assets?

Under the same conditions the executors have paid the Pennsylvania inheritance taxes upon the portion of the estate devised to the general and specific legatees. But in arriving at the amount of the tax which must be paid under the terms of the will and the Pennsylvania statute by the residuary legatees, the taxing authorities by failing to deduct from their calculated residuary estate the taxes paid on the specific and general legacies and devises have imposed a tax upon a fictitious residuary estate, which is not in the hands of the executors for distribution.

The Pennsylvania Act is somewhat peculiar. While the Supreme Court of Pennsylvania has said that the tax is an estate tax imposed upon the amount of the

whole estate, still under the terms of the act it is perfectly clear that executors have the right to deduct from the legacy of each legatee only the tax on the portion of the estate which he receives; whereas, in this case, by failing to deduct from their calculated unreal residuary estate the tax imposed upon the specific and general legacies, the taxing authorities have imposed upon the residuary legacies a tax upon the other taxes. To put it another way. You have here an act which in terms imposes upon the property received by the legatees a tax at specified rates based upon their relationship or lack of relationship to the decedent, whether such beneficiaries be general, specific or residuary legatees. The effect, however, of this adjudication is that the residuary legatees in this case are required to pay a tax on what they actually receive at a higher rate than residuary legatees in other estates pay; and this, not because of the provision in Mr. Frick's will requiring his executors to pay all the taxes out of the funds of the estate, which has the effect of imposing such taxes upon the residuary legatees, but because of the action of the taxing authorities in arbitrarily adding the amount of those taxes to the amount of money which the residuary legatees actually receive.

*It is respectfully submitted* that if the writ of error already granted is not the proper remedy in this case, the Federal questions involved are of such great and general importance, and there is such conflict and confusion between the decisions of state courts of last resort upon these points, that a writ of *certiorari* should be granted by your Honorable Court to the

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end that there shall be an authoritative decision of the extent of the taxing power of the states and a proper adjudication of petitioner's rights under the United States Constitution and laws.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Petitioners.*

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# Supreme Court of the United States

HELEN C. FRICK, Plaintiff in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	122 No. <del>442</del> October Term, 1923.
HELEN C. FRICK, Plaintiff in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	123 No. <del>443</del> October Term, 1923.
ADELAIDE H. C. FRICK et al., executors, Plaintiffs in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	124 No. <del>444</del> October Term, 1923.
ADELAIDE H. C. FRICK et al., executors, Plaintiffs in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	125 No. <del>445</del> October Term, 1923.

## BRIEF FOR PLAINTIFFS IN ERROR.

✓ GEORGE WHARTON PEPPER,  
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## **BRIEF FOR PLAINTIFFS IN ERROR.**

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### **STATEMENT OF THE QUESTIONS INVOLVED AND THE MANNER IN WHICH THEY ARE RAISED.**

#### **THE FEDERAL QUESTIONS INVOLVED.**

The Supreme Court of Pennsylvania has interpreted the tax levied under the Pennsylvania statute of 1919 as a tax on the right of transmission of property owned by decedent. The question is whether, in measuring the tax by the clear value of his estate, the act violates the Constitution of the United States by including the value of tangible articles of personalty with a definite and permanent situs in other states, and by prohibiting the deduction of amounts paid to the United States as an estate tax and to other states as taxes on the transfer of shares of stock.

THE MANNER IN WHICH THE QUESTIONS  
ARE RAISED.

These four cases involve the same questions. The assignments of error are identical. By stipulation filed, they are all to be disposed of on the record at No. 442.

These cases are writs of error to the Supreme Court of Pennsylvania allowed by the Chief Justice of the Supreme Court of Pennsylvania. The writ of error at No. 442 was sued out by Helen C. Frick, one of the residuary legatees under the will of Henry C. Frick, deceased, in a proceeding which originated in the Orphans' Court of Allegheny County, Pennsylvania, in which the property owned by Mr. Frick at the time of his death was appraised for inheritance tax purposes. The writ of error at No. 444 October Term, 1923, was a writ of error sued out in the same proceeding by the executors of Mr. Frick's will.

The writ of error at No. 443 October Term, 1923, was a writ of error sued out by Helen C. Frick, one of the residuary legatees, from a decree of distribution to the Commonwealth of Pennsylvania, originating in a separate proceeding in the Orphans' Court of Allegheny County, Pennsylvania. The writ at No. 445 October Term, 1923, was sued out by the executors in the same proceeding.

The decree entered in each of these cases is a final judgment or decree in a suit in the highest court of the State in which a decision in the suit could be had, and is one where the validity

of the statute of the State of Pennsylvania and of the authority exercised under a statute of the State of Pennsylvania was drawn in question on the ground that the said State statute and the authority exercised by the State officials under said statute was repugnant to the Constitution and laws of the United States, and the decision of the Supreme Court of Pennsylvania and of the Orphans' Court of Allegheny County was in favor of the validity of said State statute and of the authority exercised.

These are cases which may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error under the provisions of Section 237 of the Judicial Code. As a matter of precaution, however, petitions have been filed in each of these cases for a writ of *certiorari*.

**ASSIGNMENTS OF ERROR.**

(Record, 125ff., fols. 349ff.)

**FIRST.** The Supreme Court of Pennsylvania erred in entering the following judgment in said cases:

"The judgment of the court below is reversed, in so far as relates to the legacy of \$2,000,000 for the maintenance of the park given to the City of Pittsburgh, and is affirmed as respects all the other questions raised on these six appeals; the costs on all the appeals to be paid by the estate."

The judgment of the Supreme Court of Pennsylvania deprives the plaintiffs in error, the said Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and the said Helen C. Frick, individually, as one of the residuary legatees, of their property without due process of law and deprives them of the equal protection of the laws, in violation of the Fourteenth Article of Amendment to the Constitution of the United States, and also is repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, and also to clause 2 of Article VI of the Constitution of the United States, in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, Sections



400 to 410, inclusive, of an Act of Congress of the United States entitled: "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to 1101), and Section 3467 of the United States Revised Statutes are the supreme law of the land.

SECOND. The Supreme Court of Pennsylvania erred in not reversing the decree of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the said decree deprives the plaintiffs in error, the said Adelaide H. C. Frick, Helen C. Frick, Childs Frick, Henry C. McEldowney and William Watson Smith, executors, and the said Helen C. Frick, individually, as one of the residuary legatees, of their property without due process of law, and deprives them of the equal protection of the laws, in violation of the Fourteenth Article of Amendment to the Constitution of the United States and also is repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, and also to clause 2 of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursuance thereof, to wit, among others, Sections 400 to 410, inclusive, of an Act of Congress of the United States entitled: "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to

1101), and Section 3467 of the United States Revised Statutes are the supreme law of the land.

**THIRD.** The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that said distribution of \$1,188,248.16 to the Commonwealth of Pennsylvania includes a tax, to the amount of \$664,-686.61, upon tangible articles of personal property situated at the time of the death of the said Henry C. Frick in the States of New York and Massachusetts.

The ground upon which this assignment of error is founded is that so much of Article I, Section 1, of the Act of the General Assembly of the State of Pennsylvania entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, A. D. 1919 (Pamphlet Laws, page 521), as provides that a tax shall be imposed upon the

transfer of any property or of any interest therein or income therefrom to persons or corporations by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere, as construed by the Orphans' Court of Allegheny County, Pennsylvania, and this Court [the Supreme Court of Pennsylvania], is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law.

FOURTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16 distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on an estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of real estate in other states.

The ground upon which this assignment of error is founded is that in ascertaining the net estate no deduction was made for inheritance taxes paid to other states, which inheritance taxes so paid consisted of taxes on the transfer of real estate situate in other jurisdictions than Penn-

sylvania, and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States and also of the equal protection of the laws in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

NOTE.—*This (Fourth) assignment of error is withdrawn.*

FIFTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16 distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the residuary estate without deducting from the estimated gross estate the inheritance taxes paid other states on the transfer of shares of stock of corporations of other states.

The ground upon which this assignment of error is founded is that in ascertaining the net estate no deduction was made for inheritance transfer taxes paid to other states, which inheritance taxes so paid consisted of taxes on the transfer of shares of capital stock of corporations incorporated in other states than Pennsylvania and the imposition of such a tax will deprive the estate and the residuary legatees of their property without due process of law, and

also deprive them of the equal protection of the laws in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

SIXTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16 distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the residuary estate without allowing a deduction for or on account of taxes paid or to be paid on said estate to other states.

The ground upon which this assignment of error is founded is that so much of Article I, Section 2, of the Act of the General Assembly of the State of Pennsylvania, entitled "An Act providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid, and providing penalties; and citing certain acts for repeal," approved the

twentieth day of June, 1919 (Pamphlet Laws, page 521), as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to any other State or Territory, as construed by the Auditing Judge [and the Supreme Court of Pennsylvania], is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

SEVENTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania, includes a tax on the estimated tax value of the estate without deducting from the estimated value the amount paid the United States as an estate tax.

The ground upon which this assignment of error is founded is that so much of Article I, Section 2, of the Act of the General Assembly of the State of Pennsylvania, entitled "An Act providing for the imposition and collection of certain

taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the twentieth day of June, 1919 (Pamphlet Laws, page 521), as provides that, in ascertaining the clear value of estates subject to the tax, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States, as construed by the Auditing Judge [and by the Supreme Court of Pennsylvania], is invalid on the ground of its being repugnant to clause 1 of Section 8 of Article I of the Constitution of the United States in that it interferes with the power of Congress to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, and also to clause 2, of Article VI of the Constitution of the United States in that it denies that the said Constitution, and the laws of the United States made in pursu-



ance thereof, to wit, among others, Sections 400 to 410, inclusive, of an Act of the Congress of the United States, entitled "An Act to provide revenue, and for other purposes," approved February 24, 1919 (United States Statutes at Large, Vol. 40, part 1, pages 1096 to 1101), and Section 3467 of the United States Revised Statutes are the supreme law of the land, and that the judges in every state are bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding, and also to clause 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that it deprives the estate and the residuary legatees of property without due process of law and also denies to them the equal protection of the laws.

EIGHTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes a tax on the estimated value of the estate without allowing a deduction from the estimated value of the gross estate of the Pennsylvania inheritance taxes paid on the general and specific legacies and devises.

The ground upon which this assignment of error is founded is that Article I, Section 2, of the Act of the General Assembly of the State of Pennsylvania, entitled "An Act providing for the imposition and collection of certain taxes upon



the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal," approved the 20th day of June, 1919 (Pamphlet Laws, page 521), providing that "All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the Commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the

debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory," as construed by the Orphans' Court of Allegheny County, Pennsylvania, and this Court is invalid on the ground of its being repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States in that it deprives the estate and the residuary legatees of property without due process of law, and also denies to them the equal protection of the laws.

NOTE.—*This (Eighth) assignment of error is withdrawn.*

NINTH. The Supreme Court of Pennsylvania erred in affirming the decision of the Orphans' Court of Allegheny County, Pennsylvania, for the reason that the amount of \$1,188,248.16, distributed by the Orphans' Court of Allegheny County to the State of Pennsylvania includes in reality a tax not only upon the value of the estate under the jurisdiction of the State of Pennsylvania, but, in addition thereto, a tax on the taxes paid upon the estate to the United States and the various other states of the United States and the Dominion of Canada upon property, real and personal, situated in such other states and which was beyond the jurisdiction and taxing power of the State of Pennsylvania.

## BRIEF FOR PLAINTIFFS IN ERROR.

NOTE.—This case in the Supreme Court of Pennsylvania is reported as *Frick's Estate*, 277 Pa., 242 (Advance Reports for June 22, 1923).

The Supreme Court of Pennsylvania has interpreted the tax levied under the Pennsylvania statute of 1919 as a tax on the right of transmission of property owned by decedent. The question is whether, in measuring the tax by the clear value of his estate, the act violates the Constitution of the United States by including the value of tangible articles of personalty with a definite and permanent situs in other states, and by prohibiting the deduction of amounts paid to the United States as an estate tax and to other states as taxes on the transfer of shares of stock.

THE MATERIAL PARTS OF THE PENNSYLVANIA STATUTE are the title and parts of Section 1 and Section 2 of Article I of an Act approved June 20, 1919, Pamphlet Laws of 1919, page 521, West Company's Pennsylvania Statute Law, Section 20465ff, Record in this case, pages 64 and 65.

The title of the act and that part of Article I which relates to the tax upon tangible chattels located outside the state are as follows:

**"AN ACT**

Providing for the imposition and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death, and of property within this Commonwealth of a decedent who was a non-resident of the Commonwealth at the time of his death; and making it unlawful for any corporation of this Commonwealth, or national banking association located therein, to transfer the stock of such corporation or banking association, standing in the name of any such decedent, until the tax on the transfer thereof has been paid; and providing penalties; and citing certain acts for repeal.

**ARTICLE I.**

**Imposition and Rate of Tax.**

**SECTION 1.** Be it enacted, &c., That a tax shall be, and is hereby, imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situated within this Commonwealth or elsewhere" (Record, p. 64).

Section 2 of Article I, which relates to the valuation of the estate without any allowance for taxes imposed by the United States or other states, is as follows:

"SECTION 2. All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, or the wife or widow of the son, of a person dying seized or possessed thereof, and also on the clear value of such property passing from the mother of an illegitimate child, or from any person of whom the mother is a lineal descendant, to such child, his wife, or widow, and passing from an illegitimate child to his mother; and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons, bodies corporate or politic; to be paid for the use of the Commonwealth. In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory" (Record, p. 65).

## STATEMENT OF FACTS.

Mr. Henry C. Frick died in the City of New York on the 2nd day of December, 1919. He left a last will and testament (Record, p. 44), dated the 24th day of June, 1915, probated on December 6, 1919, in the office of the Register of Wills of Allegheny County and of record in Will Book Volume 160, page 6. This will is in writing. It was subscribed at the end by Mr. Frick in the City of Pittsburgh, Pennsylvania. It was attested by the written signatures of three citizens of Pittsburgh, and was in Pittsburgh at the time of his death. Mr. Frick was born in the State of Pennsylvania and he was continuously domiciled in said State from his birth until his death.

Mr. Frick, at the time of his death, owned a house at Pride's Crossing in the State of Massachusetts. By his will he devised to his wife a life estate in this property and the remainder to his daughter. He bequeathed to his wife all the tangible personal property (furniture, pictures, horses, cows, etc.) located in and about this residence. The taxing authorities of the State of Pennsylvania did not attempt to include the value of this real estate in Mr. Frick's taxable property (although the act requires it to be included), but did include the value of the tangible personal property located there at a valuation of \$325,534.25, and levied a transfer inheritance estate tax thereon. This levy has been sustained by the Orphans' Court of Allegheny County, Pennsyl-

vania, and by the Supreme Court of Pennsylvania, the court of last resort.

Mr. Frick also owned another residence, located on Fifth Avenue in the City of New York, the land and buildings being of the value of upwards of \$3,000,000. This residence he devised to a charitable corporation of the State of New York known as "The Frick Collection;" but he gave his wife the right or license to use it "so long as she should occupy the same as one of her residences" (Record, p. 51, fol. 144 a). The State of Pennsylvania has not attempted to tax this real estate, although the Act the constitutionality of which petitioners are here attacking, directs such a levy to be made. Contained in this residence was Mr. Frick's collection of paintings, antique furniture and other objects of art. This he bequeathed to said corporation of the State of New York known as "The Frick Collection" (Record, p. 51, fol. 145 a), with the mandatory provision that the collection should always be retained and maintained in said residence for the use and benefit of all persons whomsoever (Record, p. 54, fol. 149 a). This residence also contained certain other furniture, household supplies, etc., which were not a part of the Frick Collection, which Mr. Frick bequeathed to his wife. The State of Pennsylvania valued the articles of personal property comprising "The Frick Collection" at \$13,132,391, and valued the rest of the tangible personal property (furniture, etc.) that was in this residence and garage adjacent thereto at \$77,818.75. The Commonwealth included these



valuations in its estimate of the taxable value of the estate and levied an inheritance tax thereon. Plaintiffs in error contend that these articles of tangible personal property were beyond the dominion of the State of Pennsylvania, and that the Pennsylvania Act, in so far as it authorized and directed a tax to be levied on them, is a violation of the Constitution of the United States, has the effect of reducing the residuary estate by upwards of \$600,000, and deprives the plaintiff in error at 442 and 443 of her property, and deprives all the residuary legatees, including the non-resident charities, who are represented by the executors, the plaintiffs in error, at Nos. 444 and 445 of their property.

The balance of the tax in controversy in this case, amounting to upwards of \$500,000, was caused by the refusal of the State of Pennsylvania (in accordance with the mandate of the statute as it was construed by the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania) to deduct from the total taxable value of the estate before levying the tax four items: (a) estate taxes paid to the United States which were a paramount lien upon the whole estate; (b) transfer inheritance taxes paid to the states and to certain Canadian provinces upon shares of capital stock of corporations organized under the laws of those states and said provinces, which were a paramount lien upon those shares and where the shares could not be reduced to possession by the executors or over which no act of dominion could be exercised by them until such



foreign taxes were paid; (c) transfer inheritance estate taxes paid to other states upon real estate located in those other states; and (d) the inheritance taxes imposed by the State of Pennsylvania upon the general and specific devises, which taxes, so paid, amounted to \$1,925,247.61 (which will be increased if this decision of the Supreme Court of Pennsylvania stands by the additional amount of \$1,200,000).

*The fourth and eighth assignments of error*, which cover items (c) and (d) referred to, are withdrawn and no argument is made upon these points because the plaintiffs in error have reached the conclusion that under the construction placed upon the Pennsylvania statute by the Pennsylvania Supreme Court there is no Federal question involved.

The taxes included in items (a) and (b) are, by the law and under the terms of Mr. Frick's will (Record, p. 58; fol. 156 a), thrown upon the residuary estate.

The Pennsylvania inheritance tax act, as construed by the Pennsylvania courts, imposed an estate tax upon the whole property, real and personal, of which the decedent died seized, wherever situate, and allowed deductions to be made only for debts of the decedent and administration expenses. The tax imposed by the act, however, is not uniform, but is classified according to the relationships of the beneficiaries to the deceased (Record, p. 65, fol. 183 a). Under this statute, the bequests to Mr. Frick's wife and his lineal descendants were subject to a two per cent.

tax. All other devises and bequests were subject to a five per cent. tax. The Pennsylvania act contains no exemption for charities. Although Mr. Frick gave about three-fourths of his entire estate to charities, the State of Pennsylvania has taxed all these gifts except real estate outside of the state.

In order to assess the tax at the different rates, a difficult if not impossible thing to accomplish where the tax is levied upon the decedent's whole estate and not upon the gifts to the beneficiaries, the taxing authorities adopted the following method, which the Supreme Court of Pennsylvania by affirming the decision of the Orphans' Court of Allegheny County has sustained.

This is the way they made their levy (Record, p. 3, fol. 5 a). They first took the values of all the real estate in Pennsylvania specifically devised (except the devise to the City of Pittsburgh for a park which was not taxable) and of all the personal property specifically bequeathed, wherever situate, and calculated a tax on them at the rate of either two or five per cent. They then took from the will the amounts of the general legacies and assessed a tax on those at the proper rates. This brought the calculation to a point where they had found the value of the real estate in Pennsylvania and all the other property disposed of by the will, except the residuary estate, to be \$55,783,794 (Record, p. 4, fol. 6 a). This it will be understood is the sum of the general and specific bequests and devises (excluding real estate outside of Pennsylvania). They then fixed the value of the entire estate, excluding real estate

outside of Pennsylvania, at \$89,675,098.45. From this total valuation they subtracted the sum of the specific devises and bequests and reached a residue of \$33,891,304.45. From this residue they deducted the estimated administration expenses and debts of the decedent amounting to \$9,187,177.90, leaving an estimated balance of \$24,704,126.55, which the Orphans' Court of Allegheny County has christened "the net residuary estate" (Record, p. 4, fol. 6 a). The taxing authorities then proceeded to tax thirteen-hundredths of this so-called net residuary estate at two per cent because it is bequeathed to the daughter of the decedent, and eighty-seven-hundredths at five per cent because under the will it goes to various charities. These two sums they added to the tax on the specific and general devises and legacies, which gives an aggregate amount of \$3,064,107.85. Deducting \$1,978,949.71 previously paid by the executors on account, and adding \$103,090.02 interest, they arrived at a total unpaid tax claim of \$1,188,248.16 (Record, p. 4, fol. 7 a). This is the amount for which the Orphans' Court of Allegheny County entered judgment. The Supreme Court of Pennsylvania on appeal by the Commonwealth added \$100,000 (and interest thereon) to this amount, being a tax of five per cent. on what is known as the Park Endowment Fund of \$2,000,000, which the court below had found was not taxable.

The actual net residuary estate is not this fictitious amount of \$24,704,126.55 arrived at as shown above. There is no such amount of money in the residuary estate, and the residuary legatees

will never get it. The amount of money actually in the residuary estate is this estimated amount less \$6,338,898.68 paid to the United States as Federal estate tax (Record, p. 15, fol. 26 a) less \$1,084,459.42 paid to other states and countries as taxes (Record, p. 16, fol. 27 a), less \$1,978,949.71 paid to the Commonwealth of Pennsylvania as inheritance taxes (Record, p. 16, fol. 28 a), that is to say, less a total sum of \$9,402,307.81. So the actual residuary estate now in the hands of the executors is only \$15,301,818.74. Moreover, if this decision of the Supreme Court of Pennsylvania stands, the residuary estate will be still further reduced by about \$1,300,000, additional Pennsylvania taxes that will have to be paid; and, if the Commissioner of Internal Revenue is successful in the contention he is making for additional United States estate tax, it will be reduced by the further sum of \$3,100,000. This will bring the real value of the residuary estate down to about \$10,901,818.74. So that the actual net residuary estate, which it may be assumed the residuary legatees will receive, if it is not still further depleted by taxes, is not twenty-five million dollars, but somewhere between eleven and fifteen million dollars.

## POINT I.

IN MEASURING THE TAX ON THE RIGHT OF TRANSMISSION PENNSYLVANIA HAD NO RIGHT TO INCLUDE IN THE CLEAR VALUE OF THE ESTATE, WHICH WAS THE MEASURE OF THE TAX, TANGIBLE ARTICLES OF PERSONAL PROPERTY BELONGING TO MR. FRICK AT THE TIME OF HIS DEATH WHICH HAD AN ACTUAL AND READILY ASCERTAINABLE SITUS IN NEW YORK AND MASSACHUSETTS.

In this case the Supreme Court of Pennsylvania has construed the Pennsylvania statute as an exercise of the state's taxing power. This being so, the act must stand or fall as a tax act. If invalid because the tax is unconstitutional, the statute cannot be saved by an attempt to treat it as an escheat act. This precise point in connection with an earlier inheritance tax statute was decided by the Supreme Court of Pennsylvania in *Cope's Estate*, 191 Pa., p. 1.

In *Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194 (1905), this Court was called upon to decide whether a corporation organized under the laws of Kentucky was subject to taxation upon its tangible personal property permanently located in other states and employed there in the prosecution of its business. The decision was that the tangible personal property so located was not subject to the taxing power of Kentucky, and the taxing statute was adjudged to be a violation of the due process of law clause of the fourteenth amendment.

In the course of the opinion of the Court, the following language occurs (p. 211):

"It is unnecessary to say that this case does not involve the question of the taxation of intangible personal property, or of inheritance or succession taxes, or of questions arising between different municipalities or taxing districts within the same state, which are controlled by different considerations."

During the years which have elapsed since this decision, this Court has decided such of the questions covered by the above reservation as concern the taxation of intangible personal property, both through the medium of direct property taxes and through the medium of inheritance or succession taxes. In both instances it has been decided that such taxation is within the power of the state of the domicile.

In that interval, the question presented by the instant case has not come before the Court, and now for the first time the Court must decide whether a state, through the medium of a tax on the right of transmission, can reach tangible personal property definitely and permanently located at the time of the decedant's death in other states and subject to their power of taxation, and so accomplish indirectly what it was adjudged in the *Union Transit Company* case the State of Kentucky could not do through the medium of a property tax.

It is evident from the cases decided by this court and by courts of last resort in many states

that the distinction between tangible and intangible property is regarded as much more significant than the distinction between so-called property taxes and taxes such as inheritance taxes and other excise taxes measured by the value of property.

There is an obvious distinction between tangible and intangible property. The latter is held secretly; there is seldom or never a method by which its existence or ownership can be ascertained in the state of its situs except perhaps in the case of mortgages or shares of stock.

The arguments in favor of the taxation of intangible property at the domicile have little application to tangible property. The fact that such property is visible, easily found and difficult to conceal and the tax is readily collectible is so cogent an argument for its taxation at its situs that there has been a growing consensus of opinion that it is taxable in the state where it is permanently located and employed and where it receives its entire protection.

Thus in the present case the articles of tangible property in Massachusetts have actually been reached for taxation through the medium of the Massachusetts Inheritance Tax Law. Likewise, in New York succession taxes have been paid in respect of all the tangible personalty situate in that state except The Frick Collection, which, being the subject of a gift to charity, is, under the policy of New York, exempt from the taxation to which it would otherwise have been subject.



On the other hand, the distinction between a tax on property measured by its value and a tax on the transmission of property determined in amount by the value of the property selected as its measure is at best a shadowy one.

When analyzed, a tax on property is seen to be a tax on the thing called ownership, which is merely a person's legally protected interest in the thing owned. A tax on transmission is a tax on the substitution of one person for another in respect of the relation between the person and the thing. While the distinction is entirely thinkable there is no really sound or substantial reason for reaching in the one case a result different from that reached in the other. In other words, there is no good reason in fairness, justice, or even in convenience, for sustaining a tax measured by the value of property in the one case where on precisely the same set of objective facts it has been decided in the other that the attempt of the state is void as amounting to confiscation.

*Discussion of decisions of this court on the taxation of tangible and intangible personal property.*

In the *Union Transit case* (*supra*) the tangible personal property in question consisted of cars rented to shippers who took possession of them from time to time at points outside the taxing state and used them for the carriage of freight in the United States, Canada and Mexico. The owner contended that the power of Kentucky to tax these cars was limited to the number



of cars which, under a system of averages upon their gross earnings, could be shown to have been used within the limits of the taxing state. The Court of Appeals of Kentucky, however, found that the Company was liable to taxation, not upon the few cars determined by this system of averages, but upon the entire number of two thousand cars irrespective of their actual situs. It was this decision which was reversed by this court on the ground that it involved a violation of the guarantees of due process under the Fourteenth Amendment.

If the question presented to this court in that case had been presented upon a record in which the State of Kentucky had attempted to tax treasures of art and other objects of personalty located in New York and Massachusetts and belonging to a citizen of Kentucky, it is clear that the tax would similarly have been adjudged invalid. The question, therefore, narrows itself to this: whether the State of Kentucky, by awaiting the death of the owner and imposing a transmission tax measured in terms of the value of those same articles of property, could successfully have reached them for taxation after the accident of death, in spite of the presence of every objection based upon unfairness, injustice, inconvenience and lack of power which had compelled a declaration of the invalidity of the tax when imposed during his lifetime.

Both before and after the decision in the *Union Transit case* are many decisions of this court in which decisive emphasis was laid upon

the distinction between tangible and intangible property, and where the nature of the tax as being a tax on property or merely a tax measured by the value of property was immaterial.

In *Pullman's Palace Car Co. vs. Penna.*, 141 U. S., 18, the tax on cars was upheld only because a method of calculation was resorted to which resulted in limiting the tax to cars inside the state and prevented it from affecting those beyond its limits. This was the case of a state tax on capital stock which happened to have been regarded by the Supreme Court of Pennsylvania as a property tax, but which elsewhere has been regarded as a franchise tax.

In *Delaware Lackawanna & Western R. R. Co. vs. Penna.*, 198 U. S., 341, it was held that the Pennsylvania capital stock tax could not include in the valuation for tax purposes real estate out of the State or tangible personal property (coal) which was stored outside the State.

In *Union Transit Co. vs. Kentucky* (*supra*) this court used as a relevant decision *Weaver's Estate vs. State*, 110 Iowa, 328, where it was held that a herd of cattle within the State of Missouri belonging to a resident of Iowa was not subject to the taxing power of Iowa, although the device resorted to by Iowa for reaching the cattle by taxation was an inheritance tax measured by the value of the owner's estate. It will be noted that this decision, thus cited with approval by this court, is not only in direct opposition to the decision of the Supreme Court of Pennsylvania

here assigned as error, but it was rendered in a case in which the Iowa executors had actually converted the Missouri cattle into money and had brought the fund into the Iowa Court for accounting and distribution. In the instant case The Frick Collection will not be, and cannot be, sold, and the Collection itself can never find its way into Pennsylvania.

In *New York Central R. R. vs. Miller*, 202 U. S., 584, although the tax was confessedly a franchise tax measured by the value of the company's property, the decision sustaining the validity of the tax, so far as it related to rolling stock which wandered in and out of the state, was rested upon the failure of the company to prove that the cars remained away for such a length of time as to acquire a situs elsewhere and upon the absence of satisfactory evidence upon which to base an apportionment.

In *Southern Pacific Railroad Company vs. Kentucky*, 222 U. S., 63, which was a tax on the property of the Southern Pacific Railroad imposed by the State of Kentucky, its domicile, it was held that Kentucky could not include in the valuation tangible personal property (tug boats and barges) which had acquired a local situs in other states, but that they could include the steamships which had never been in, and never could be brought into Kentucky, because they wandered around the world on the high seas, and had never acquired any situs in any other state.

In *Fidelity and Columbia Trust Co. vs. Louisville*, 245 U. S., 54, consistently with the

distinction under consideration, it was held that Kentucky could impose upon a person domiciled in Kentucky a tax measured in part by money owed to him by his bank of deposit in Missouri.

In *Bullen vs. Wisconsin*, 240 U. S., 625, decedent died domiciled in Wisconsin, leaving corporate bonds in a safe deposit box in Illinois. The State of Wisconsin levied an inheritance tax and included the deposited bonds in the estate which was the measure of the tax. Consistently with the distinction between tangible and intangible personalty, the domiciliary state had a clear right to do this. It was sought by counsel for the executors to impeach the right of the domiciliary state by proof of the circumstance that the deposited bonds had been taxed in Illinois. Since double taxation by different sovereignties is not in itself a ground of invalidity, but merely a circumstance to be taken into consideration in determining the question of due process, the Court held that the mere fact that the bonds had been taxed in the state of deposit could not displace the right of the domiciliary state to include them in the measure of the inheritance tax.

In *Wallace vs. Hines*, 253 U. S., 66, it was held that a special excise tax (p. 68), which was arrived at by apportioning the mileage of tracks within the State of North Dakota to the mileage of tracks everywhere, was unfair and invalid where the railroad company proved that the miles of track outside the state were of very much greater value than the miles of track within the state. The railroads involved were North-

ern Pacific Railway Company, Great Northern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Minneapolis, St. Paul & Saulte Sainte Marie Railway Company and Montana Eastern Railway Company.

It will be observed that this was the case of an excise tax, not a tax upon property. The measure of the tax was property, but was not for the most part personalty. The case is cited for the purpose of showing the scrupulous care used by the Court to limit both property taxes and excise taxes to property within the taxing state. As in the case of the Pullman cars, so in the case of track mileage, the tax is upheld if the apportionment of property within and without the state is fair; and is adjudged invalid if, as in the Hines case, the method of calculation is unfair.

In all cases cited above, except *Pullman Palace Car Co. vs. Pa.*, 141 U. S., 18, and *Wallace vs. Hines*, 253 U. S., 66, the tax act which was under review was an act passed by the State of the domicile and was either a tax on the ownership of property or a tax on the use or transmission of property. In every case in which the property was intangible personalty the tax was upheld. In every case in which tangible personalty with a situs outside the domiciliary state was either sought to be taxed or to be included in the measure of the tax, the tax was adjudged invalid. The *Pullman car case* and the case of *New York Central Railroad vs. Miller*, 202 U. S., 594, are not exceptions to this statement. In neither case was the taxing act an act passed by the state of

which the company was a citizen. In the former, the tax was upheld because the method of determining what proportion of cars might fairly be treated as cars operating within the taxing state was deemed reasonable and just. In the latter case, which involved rolling stock that wandered in and out of the state, there was insufficient evidence for making such an allotment and a failure to prove that any of the cars had acquired a situs anywhere else.

The limited power of each one of the United States to reach by taxation tangible personalty physically beyond its boundaries is in marked contrast with the plenary power of the United States to use its jurisdiction over its domiciled citizens as a basis for taxing their tangible personalty wherever it may be. The due process clause in the fifth amendment to the Constitution is the only restraint upon the United States in this respect, and a much more limited scope has been accorded to it by this Court than to the due process clause in the fourteenth amendment, which constitutes a wholesome restraint upon the several states. This clearly appears from the decision of this Court in *United States vs. Bennett*, 232 U. S., 299, which was the case of a Federal tax on the use of foreign-built yachts owned by citizens of the United States who were domiciled therein. The opinion of the late Chief Justice at p. 306 is a lucid statement of this important discrimination between "due process" in the fifth amendment and the same words in the fourteenth amendment.

We turn now to a brief survey of the decisions of this Court respecting taxation of tangible and intangible personalty where the taxing state was not the state of the domicile of the owner.

In *Blackstone vs. Miller*, 188 U. S., 189, the decedent was domiciled in Illinois, but at the time of his death had a deposit account with a bank in New York. It was held that New York could include the deposit in measuring its inheritance tax. The basis of this decision is that a tax on the transmission of a debt may properly be laid by the state that has jurisdiction of the debtor, because it is only under its laws that the collection of the debt can effectively be enforced; and this decision is consistent with the right of the state of the domicile of the creditor to include the credit in the inheritance tax levied by it, upon the general principle applicable to all intangible personalty.

In *Wheeler vs. New York*, 233 U. S., 434, promissory notes owned by non-residents of New York were contained in a safe deposit box in that state. It was held that New York could include the value of these notes in assessing the inheritance tax payable by the estate of the deceased owner. Since in this case not only the payee of the note, but also the maker, was a non-resident, the decision is a recognition of the right of a state other than the state of the domicile to tax the transmission of intangible personalty where access to the evidences of debt can be obtained in New York only in virtue of an authority conferred by the New York laws.



It will be observed that the right of New York to reach the promissory notes for purposes of taxation is similar to the right exercised by Illinois in *Bullen vs. Wisconsin*, *supra*, to tax bonds on deposit in Illinois but owned by one who died in Wisconsin.

In *Maxwell vs. Bugbee*, 250 U. S., 525, this Court passed upon a method adopted by the State of New Jersey for determining for the purposes of its inheritance tax the value of property within the state, both real and personal, belonging to a decedent who died domiciled in another state. The question was similar to the question discussed in the *Pullman Car case*, in *New York Central Railroad vs. Miller*, and in *Wallace vs. Hines*; that is to say, the case depended upon the inherent reasonableness of the method of determining what portion of the property might fairly be regarded as within the limits of the taxing state. The majority of the Court were of opinion that the method adopted by the state was fair, but from this decision four Justices dissented.

In all of the cases so far discussed, the major emphasis was laid by the Court upon the nature of the property, as being either tangible or intangible and, if tangible, upon the situs of the property, as being either within or without the taxing state.

*Where a right is conferred by another state, its value cannot be included in the valuation for tax purposes.*

In many of these cases there is more or less reference to one of the basic principles of taxa-



tion, which is that the citizen enjoys a protection of person and property, which is a reciprocal of the power of the sovereign to tax him.

It is of course not possible to test the validity of a tax act by asserting a specific relation between the amount or nature of the tax and the degree of protection afforded. Where a right which is the subject of tax cannot possibly have been conferred by the taxing state, but exists because of the act of another sovereignty, the value of the right in question may not lawfully be included in a tax laid by the taxing state.

The leading case for this proposition is *Louisville Ferry Co. vs. Kentucky*, 188 U. S., 385, in which it was held that Kentucky in levying a franchise tax on a Kentucky corporation could not lawfully include in the valuation of the franchise a ferry right given to the corporation by the State of Indiana, in virtue of which ferry right, jointly with the franchise granted by Kentucky, the corporation operated its ferry across the Ohio River.

Similarly it has been held that a state in subjecting a foreign corporation to an excise tax measured in terms of the authorized capital and surplus of the corporation must observe reasonable regard for the proportion of capital actually used for business purposes within the taxing state. Accordingly, where in *Baltic Mining Co. vs. Massachusetts*, 231 U. S., 68, a tax of this sort was levied but was subject to an upward limit of two thousand dollars, this Court held that the state had not violated the due process clause. On

the other hand, where in *Looney vs. Crane Company*, 245 U. S., 178, it appeared from the record that the proportion of capital actually employed by the corporation in doing business in the taxing state was very small, where the graduated tax was measured by the entire capital stock and surplus without a maximum limit, and where the sum actually sought to be collected from the corporation would have been \$17,040, this Court held that the fourteenth amendment had been violated, inasmuch as this was in effect an attempt to exercise taxing power over property and rights wholly beyond the jurisdiction of the state.

*The theory upon which the Commonwealth of Pennsylvania attempts to sustain the tax in the instant case.*

In the light of the foregoing decisions and of the principles which underlie them, we assert that the State of Pennsylvania violated the due process clause of the fourteenth amendment when it undertook to include in the measure of a tax on transmission, tangible personal property with a situs in New York and Massachusetts which it could not have subjected to taxation by resorting to a property tax. The defendant in error, however, seeks to justify the act in question upon a variety of grounds.

One of these grounds is stated in the majority opinion, page 98 of the Record (end of fol. 241 and beginning of fol. 242), where the court seeks to some extent to justify its decision upon the proposition that inasmuch as the property which is being distributed in this proceeding is all in Penn-

sylvania and the decedent was a citizen of Pennsylvania, and, as the opinion says, the appellants are citizens of Pennsylvania, the tax can be sustained upon the ground that the Pennsylvania courts have jurisdiction of the person as well as of the property. The court evidently overlooked the fact that while one of the residuary legatees, Miss Frick, the plaintiff in error in two of the cases before the court, is a citizen of Pennsylvania, other residuary legatees represented by the executors, who are their proper representatives in Pennsylvania and in this court (see Chief Justice Gibson's opinion in *Koch's Estate*, 4 Rawle, 268), are not citizens or residents of Pennsylvania. In Article VII of his will (Record 56, fols. 154 and 155) Mr. Frick bequeathed of his residuary estate, to Princeton University 30 per cent., to Harvard College 10 per cent., to Massachusetts Institute of Technology 10 per cent., to the Society of the Lying-In Hospital of the City of New York 3 per cent. Thus altogether 53 per cent. of the residuary estate went to citizens of New Jersey, New York and Massachusetts. Consequently, it is not a fact, as the court assumes, that Pennsylvania has jurisdiction over the person as well as of the property.

We believe that if any justification is possible, it must be founded either (a) upon the fiction expressed by the words *mobilia sequuntur personam*; or (b) upon the proposition that the succession to decedent's tangible property outside of the State passes by virtue of the laws of the State of the domicile, and that therefore

both the State of domicile and the State of the *situs* can tax; or (c) that because there is money being distributed by the Pennsylvania courts to beneficiaries who must come into Pennsylvania to get their share in the distribution, the State of Pennsylvania can impose a tax upon the property in Pennsylvania and determine the amount of the tax by adding to the value of the taxable property within the State the value of the non-taxable property without the State.

The tax in the instant case does not involve an estate tax upon Mr. Frick's real estate located in other places than Pennsylvania, although Mr. Frick had millions of dollars' worth of real estate elsewhere, and although the mandate of the statute is just as explicit with respect to real estate as it is with respect to personalty, the language being "the transfer of any property, real or personal, \* \* \* whether the property be situated within this Commonwealth or elsewhere" (Record, bottom of p. 64 and top of p. 65, folio 182 a). This omission to impose a tax on the foreign realty is made presumably because the mandate of the statute, so far as it relates to foreign real estate, was so clearly a violation of the due process clause that the State has never attempted to enforce it. We submit that it is just as much beyond the jurisdiction of the State of Pennsylvania to levy a tax upon the transfer of tangible personal property which has an actual *situs* elsewhere as upon real estate whose *situs* is elsewhere.

The right to impose a transfer tax upon personal property must necessarily be based upon

the same jurisdictional fact as the taxation of the transfer of real estate. We submit that it is the law that, while the transfer of intangible personalty can be taxed at the domicile of the owner, either *inter vivos* or upon death, that is true only because of the fiction *mobilia sequuntur personam*.

Originally this theory applied to tangibles as well as to intangibles, but it has long since passed away as to anything except intangibles. This, because fiction must yield to fact.

These tangible articles, pictures, furniture, household stores, cows, horses, agricultural implements, have a real, physical existence and necessarily have a situs as surely as buildings and lands have. Their situs is in New York and Massachusetts, not in Pennsylvania. Therefore, this tax cannot be sustained upon authority of the maxim *mobilia sequuntur personam*, either under the decisions of this Court or under the decisions of the Supreme Court of Pennsylvania:

*Eidman vs. Martinez*, 184 U. S., 578, at pp. 581-582;

*Union Refrigerator Transit Co. vs. Kentucky*, 199 U. S., 194, at p. 206;

*Metropolitan Life Insurance Co. vs. New Orleans*, 205 U. S., 395, at p. 402;

*Commonwealth vs. Delaware, Lackawanna & Western R. R.*, 145 Pa., 96, at p. 103;

*Commonwealth vs. American Dredging Co.*, 122 Pa., 386;

*Hostetter's Estate*, 267 Pa., 193.

This proposition is so clear that no attempt was made in the Supreme Court of Pennsylvania to sustain the tax upon the foreign tangibles by reference to the maxim. On the contrary, the Commonwealth of Pennsylvania stated in its brief filed in that court (bottom p. 18 and top of p. 19):

"Thus far no reference has been made to the maxim '*mobilia sequuntur personam*.' Such reference has been purposely omitted because it was not desired to base this argument upon fiction, but upon fact."

The Supreme Court of Pennsylvania, in its opinion by Mr. Justice Simpson (Record, p. 93, fol. 232), does not even mention the maxim or in any way refer to it as constituting any authority for the levying of this tax.

The proposition that was contended for by the Commonwealth of Pennsylvania is that the taxing power can be sustained because "it is the law of Pennsylvania which determines the validity of the will of Mr. Frick and of the dispositions of certain property therein made. The law of Pennsylvania, and not the law of Massachusetts or New York determines how the tangible personalty shall be transferred and whether it shall be transferred at all. Since the law of Pennsylvania governs, that law may condition the transfer in such method, either by way of inheritance tax or otherwise, as the Legislature sees fit."

This argument, we submit, is fundamentally unsound because such is not the fact. The valid-

ity of Mr. Frick's will in Massachusetts and in New York and the question whether the specific bequest, for example, of this tangible personal property, worth upwards of thirteen million dollars, to The Frick Collection, a citizen of the State of New York, is valid or not depend upon the common law and statutes of the States of Massachusetts and New York, not in any degree upon the laws of the State of Pennsylvania. when one reads carefully the decision of the Supreme Court of Pennsylvania as expressed by Mr. Justice Simpson it will be observed that the State of Pennsylvania did not base its decision upon the proposition we are now discussing. It is only in connection with the third proposition that the Supreme Court of Pennsylvania refers to this proposition at all; and then the court refers to it as a sort of make-weight in support of the third proposition.

The third proposition is that, since there was property in Pennsylvania which did pass and which was undoubtedly subject to its jurisdiction, the State of Pennsylvania could impose such conditions as it pleased upon the transfer of that property; that when the residuary legatees came into Pennsylvania to get their share in the residuary estate which was in the hands of the Pennsylvania executors, the State of Pennsylvania could say to them: "You shall take only what we see fit to allow you to take, and what you can take is only that which is left after we have deducted an *ad valorem* tax upon the value of all the property, adding to the value of the property



within our jurisdiction the value of all real estate and all tangible personal assets located without our jurisdiction."

We have stated the proposition as above, (although in the instant case there was no attempt to add the value of the foreign real estate) because the statute requires the adding of the value of the real estate and because the principle asserted by the Pennsylvania Supreme Court is just as applicable to real estate outside of the state as it is to tangible chattels outside of the state.

We submit that the levying of a capital tax, an *ad valorem* tax, a transfer tax, based upon any such theory and actually producing such a result, is unjust, is confiscatory, is a violation of due process of law as expressed in every charter upon which English-speaking people have relied from the Great Charter of 1215 to the fourteenth amendment of the Constitution of the United States. The establishment of such a proposition would mean the overturning of the whole theory of taxation. It would mean that if a citizen of Pennsylvania dies leaving twenty millions of dollars, of which one million is in Pennsylvania and nineteen millions elsewhere, the State of Pennsylvania can levy a five per cent. tax (its taxes must be uniform) on the transfer of property in Pennsylvania, but in ascertaining the value of the million dollars' worth in Pennsylvania it can add to it the nineteen million dollars which is elsewhere and tax the whole, so that the five per cent tax on that million dollars is not fifty thousand dollars, but is one million dollars; that the State of Penn-



sylvania can take the whole one hundred per cent of the Pennsylvania assets and call it a five per cent. tax. Such a proposition is preposterous. Once establish that proposition and you have no boundary at all to confiscation. Why? Because you are levying an *ad valorem* tax and basing the tax upon something else than the value of that which is taxed. Any such theory of taxation is directly in the teeth of the decisions which we have cited on pages 35 to 38 of this brief.

*At the decedent's death these tangible articles of personal property passed by virtue of the laws of Massachusetts and New York, not of Pennsylvania.*

Recurring then to the real question in this case, is it a fact that the succession to these tangible articles of personal property located in New York and Massachusetts passed by virtue of the laws of Pennsylvania, not by virtue of the laws of New York and Massachusetts?

*Tangible* personal property is subject to the dominion of the sovereignty where it is situated. The question who is to be recognized as its owner during the life of the owner is a question solely for the sovereignty where the property is located. To whom the title passes when its owner dies is determined by the law of that sovereignty alone, and does not depend in any degree whatsoever upon the law of any other sovereignty.

The question in this case is the validity of Mr. Frick's will in New York and Massachusetts. Is his will valid under the laws of those states?

There must be a compliance with the laws of those states before the will will pass title to tangible property in those states.

Coming then particularly to the question of what happens to Mr. Frick's tangible property in New York and Massachusetts when he dies, What will be done with it? Take first these tangibles which by Mr. Frick's will are bequeathed specifically to a New York corporation, a citizen of the State of New York. Will any one deny the proposition that whether this citizen of New York gets these chattels depends first upon the question, Is Mr. Frick's will valid under the laws of the State of New York? and in the second place, if the legatee has difficulty in getting them, will it not be the Surrogate of the City of New York that will make the order that enables him to get them, rather than the Register of Wills or the Orphans' Court of Allegheny County, Pennsylvania? When you have answered these two questions, you have decided this case.

It is horn-book law that the Pennsylvania executor or administrator can do nothing in New York or Massachusetts under any authority derived from the State of Pennsylvania. Why? Because the jurisdiction of Pennsylvania ends at the state line. There are many things which the states of New York and Massachusetts—the Surrogate of New York and the Probate Court of Essex County—may do in aid of the principal administration in Pennsylvania; but what they do they do because of the laws of New York and Massachusetts, not because of anything in the

laws of Pennsylvania—but nowhere, at any time, in any English-speaking country did the sovereignty of an ancillary administration where the tangible chattel was situated which was specifically bequeathed to a citizen of that sovereignty send the thing “home” to the state of the principal administration and make its own citizen go there to get it.

In *Harvey vs. Richards*, 1 Mason, 381, Mr. Justice Story states the rule in such cases—the common law of the United States. So Mr. Justice Holmes says in *Blackstone vs. Miller*, 188 U. S., 189, at p. 204:

“Ancillary administrators pay the local debts before turning over the residue to be distributed, or distributing it themselves, according to the rules of the domicile. The title of the principal administrator or of a foreign assignee in bankruptcy, another type of universal succession, is admitted in but a limited way or not at all.”

The law of England is the same.

*In re Lorillard, Griffiths vs. Catforth* (1922, 2 Ch., 638), Lord Justice Warrington said:

“The persons entitled to the unadministered residue are in this country, and the Court will not order these moneys to be sent to an administrator abroad.”

So at common law we see that it is merely a matter of comity; that is, it is a question for the common law of New York and Massachusetts

how far they will recognize the laws of Pennsylvania as to the validity of a Pennsylvania will and of the succession to property located in New York and Massachusetts, and that in so far as they do recognize it, they do so because such is the common law of New York and Massachusetts, not because it is the common law of Pennsylvania. We differ entirely from Mr. Justice Simpson of the Supreme Court of Pennsylvania, where he says (Record, near bottom of p. 102, that it is merely metaphysics to argue whether the transfer is effected by the law of the situs or the law of the domicile. The question is, which law is effective to make a valid transfer in New York and Massachusetts?

Obviously if New York and Massachusetts have legislated as to what foreign wills are valid to pass title to property in those states, it is their statutes, not the statutes of Pennsylvania, which are effective in New York and Massachusetts.

*We shall first take Massachusetts.* We notice first that the laws of Massachusetts make no distinction as to the validity of foreign wills, depending on whether they pass real estate or personal property. We notice further that a will of a non-resident is valid in Massachusetts if it is executed in accordance with the laws of Massachusetts *or* in the mode prescribed by the law either of the place where the will is executed *or* of the testator's domicile, *provided* that in those last cases it is in writing and subscribed by the testator (Record, p. 88, folio 224 a). There are many other provisions in the Laws of Massachusetts intro-

duced in evidence in this case and printed in the Record beginning on top of page 86 and ending at bottom of page 90, which may be read with interest and profit; but this one thing we have referred to is all sufficient. Is Mr. Frick's will valid in Massachusetts? Will Mrs. Frick get these specific articles which are located in Massachusetts and are bequeathed to her by that will? The will is in writing; it is subscribed at the end; it has three subscribing witnesses; it has been admitted to probate in Massachusetts, and letters ancillary have been issued there. Why was it admitted to probate in Massachusetts? Because (1) it is a perfectly valid will under the laws of the State of Massachusetts; (2) it was executed in the mode prescribed by the law of the place where the will was made (Pennsylvania) and therefore it is a good will in Massachusetts; (3) it was executed in the mode prescribed by the law of Mr. Frick's domicile (Pennsylvania) and therefore is a good will. Measured by all three tests prescribed by the Massachusetts law, it is a valid will, competent to pass title to property, real and personal, in Massachusetts. If Mrs. Frick has any trouble in getting these tangible articles, these pictures, this furniture, these horses, cows and agricultural implements, to whom will she go to get them? Infallibly to the courts of the State of Massachusetts. The courts of Pennsylvania can give her no relief.

Moreover, it will be noted that, even though the will complied with another law than the law of Massachusetts in every particular, nevertheless

the courts of Massachusetts, under the statute of that state, would be powerless to give it any effect if it were not in writing and subscribed by the testator. This is a most important exception rendering ineffective in Massachusetts all foreign nuncupative wills; and it forcefully brings out the fact that the control of the title to Mr. Frick's chattels in Massachusetts was retained by that state.

*Let us look now at the statutes of New York.*

(1) The validity of a will in New York disposing of real property is regulated by the laws of the State of New York, without regard to the residence of a decedent (Record in this case, p. 75, folio 201 a). The New York real estate passed because Mr. Frick's will was a good New York will.

As to personal property:

"Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state \* \* \* are regulated by the laws of the state or country in which the decedent was a resident at the time of his death." (Record, p. 75, folio 201 a).

So that if Mr. Frick's will does not otherwise run counter to the laws of the State of New York, it is a valid New York will disposing of personal property, to wit, the objects of art constituting The Frick Collection and the other tangible ar-

ticles situated in New York, if it is executed in the way that the laws of Pennsylvania, his domicile, require of such wills.

Here again it is a valid will in New York, not by virtue of the extraterritorial effect of the laws of Pennsylvania, but because the laws of the State of New York say that a will so executed is valid in New York.

If one should have any further doubt about the proposition, let us see what the exceptions are. The Pennsylvania will, if we may use that expression, is only good to pass tangible articles of personal property in New York, if it does not run counter to any other provision of New York law. We see that there must be ancillary administration in New York (Record, p. 79, folio 207 a), or its equivalent (Record p. 78, folio 206 a). We see that there must be an accounting in New York (Record p. 79, folio 207 a, 208 a); and a great many other things are required by the New York statutes which are in evidence in this case, beginning at Record p. 75, folio 201 a and ending at bottom of p. 85, folio 219 a.

Above and beyond all these things, while Mr. Frick's will is valid in Pennsylvania, we see that it is not valid in New York. Why is it not valid in New York? Because under the laws of New York no person having a husband, wife, child or parent shall by will give to any benevolent or charitable association more than one-half part of his estate (Record p. 78, folio

206 a). Mr. Frick did leave a widow and children; he did leave more than one-half his estate to charities (Record p. 40, folios 120 a, 121 a). The Supreme Court of Pennsylvania disposes of this by saying that these provisions of the New York statute "relate, however, only to wills of testators there (in New York) domiciled." (Record p. 102, folio 249 a).

The Court of Appeals of the State of New York has decided just exactly the contrary, to wit, that if the bequest to charities made by the will of a citizen of New Jersey exceed more than one-half of the net value of his entire estate, real and personal, the charitable bequest as to all the property located in New York is void and the property goes to the heirs: *Decker vs. Vreeland*, 220 N. Y., 326.

Are the validity, the effect and the meaning of this New York statute, and the question whether or not a will which conflicts with its provisions can pass title to tangible articles in New York, to be governed by the decision of the Court of Appeals of New York or by the Supreme Court of Pennsylvania? Who can doubt the answer?

Indubitably it is the law of New York that is going to decide who owns this Frick collection; and on the particular point we have been discussing, should the question ever arise, it will decide that Mr. Frick's will was valid in spite of its violation of the New York statute because his widow and children saw fit to ratify the bequest



after his death; and this is so because that is the law of the State of New York. *Amherst College vs. Ritch*, 151 N. Y., 282.

Again, the final judicial authority in the State of New York has decided that the State of the domicile has no authority to impose a transfer succession tax on personal property in the State of New York. *State of Colorado vs. Harbeck*, 232 N. Y., 71, decided November 22, 1921.

Assume then for the purpose of argument that the State of Pennsylvania cannot tax the transfer of these tangible articles of personal property which were located in New York at the time of Mr. Frick's death, either because of the maxim *mobilia sequuntur personam*, or because of the like fiction that succession to them follows the law of the domicile:

(One is tempted to insert parenthetically in this connection Mr. Justice Holmes' language in *Blackstone vs. Miller*, 188 U. S., 189, on p. 205: "according to the fiction that in successions after death *mobilia sequuntur personam* and domicile governs the whole", and again on p. 206, where he is speaking of a distinction as to the power to impose a succession tax on debts on the one hand and tangible chattels on the other, he says: "The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other", and Mr. Justice Fields' language in *Pennoyer vs. Neff*, 95 U. S., 714, at p. 722: "and so it is laid down by jurists as an elementary principle that the laws of one state have no operation outside of its

territory, except so far as is allowed by comity, and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decision. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity and incapable of binding such persons or property in any other tribunals.' ")

What now becomes of the Commonwealth of Pennsylvania's last ditch, namely, that, even if it cannot lawfully levy a transfer inheritance tax upon tangible articles of personal property outside the state, it can levy a transfer inheritance tax upon property within the state and add to the value of that property the value of the property without the state and tax the whole?

Let us try to think clearly about this.

It is not, in the first place, what the Pennsylvania act undertakes on its face to do. The provision of the act itself is so clear as to require no construction, and we do not understand that the Supreme Court of Pennsylvania has construed it to mean anything else than what it says, to wit, that it is a tax "upon the transfer of property", (Record, p. 64, folio 182 a); and that when the transfer is by will from any person dying seized or possessed of the property while a resident of the Commonwealth, whether the property be situate within the Commonwealth or elsewhere (Record top of p. 65, folio 182 a), the tax imposed shall be at the rate of two per centum upon the clear value of the property passing to the father, mother, etc.

and at the rate of five per centum on the property passing to any other person.

It seems to us that the Supreme Court of Pennsylvania took rather a giddy leap when it proceeded to say that, while this act explicitly imposes a tax upon property outside the state, which it cannot do consistently with the Fourteenth Amendment, the act, nevertheless accomplishes the same result indirectly, by adding the value of the property outside the state, which is non-taxable, to the value of the property within the state, which is taxable, and imposing a *transfer tax* measured by the whole. If Pennsylvania can do this with reference to tangibles outside of the state, New York and Massachusetts can do the same thing. They can say that the tangibles which are in their state and within their taxing powers may be valued, for tax purposes, not at their actual value, but at the value of all Mr. Frick's estate everywhere.

But obviously the foreign States cannot do this. Moreover, the answer to the reasoning of the court below, is two-fold.

(1) The legislature of the State of Pennsylvania manifestly never intended to do any such thing and never authorized it. Its tax according to the plain language used was a tax imposed upon the transfer of property outside of the state.

(2) But be this as it may, we submit with confidence that no court in Christendom ever

sustained any such proposition. Such a thing is not due process of law. The late Chief Justice White in his celebrated opinion in *Knowlton vs. Moore*, 178 U. S., 41, says on page 76:

"In other words, the construction proceeds upon the assumption that Congress intended to tax the separate legacies, not by their own value, but by that of a wholly distinct and separate thing. But this is equivalent to saying that the principle underlying the asserted interpretation is that the house of A, which is only worth one thousand dollars, may be taxed, but that the rate of the tax is to be determined by attributing to A's house the value of B's house, which may be worth a hundredfold the amount."

and again (p. 77):

"It may be doubted by some, aside from express constitutional restrictions, whether the taxation by Congress of the property of one person, accompanied with an arbitrary provision that the rate of tax shall be fixed with reference to the sum of the property of another, thus bringing about the profound inequality which we have noticed, would not transcend the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems."

What Pennsylvania is attempting cannot be done without violating the fourteenth amendment, because it is doing just exactly what this Court said in *Maxwell vs. Bugbee*, 250 U. S., 525,

a state cannot do. It is a curious thing that the Supreme Court of Pennsylvania cites *Maxwell vs. Bugbee* as authority for its proposition.

It is apparent that the Supreme Court of Pennsylvania misapprehended the case this Court had before it and the meaning of the language used in the opinion. In *Maxwell vs. Bugbee* the question raised was as to an inheritance tax upon the estate of a non-resident. The tax was levied with respect only to the local real and tangible personal property in the State of New Jersey and with respect to stock of New Jersey corporations and National Banks located in the State of New Jersey. The provision of the state tax law which was in question is the provision requiring the tax levied to bear the same ratio to the entire tax that would be imposed under the act if the decedent were a resident and all his property were located within the state as his property within the state bears to the entire estate, wherever situated, specific devises or bequests of property within the state being excluded from the computation.

The complaint of plaintiff in that case was that the act inflicted an unequal tax, which bore more heavily on the estates of non-residents than on the estates of residents. When one reads Mr. Justice Day's opinion in connection with his references to authorities, it becomes clear that the case does not support the proposition for which it is cited by the Pennsylvania Supreme Court, but on the contrary is directly antagonistic.

Thus, Justice Day says, p. 539:

"In the present case the State imposes a privilege tax, clearly within its authority, and it has adopted as a measure of that tax the proportion which the specified local property bears to the entire estate of the decedent. That it may do so within limitations which do not really make the tax one upon property beyond its jurisdiction, the decisions to which we have referred clearly establish."

The instant case violates Mr. Justice Day's rule. It involves the proposition that the state of the domicile may add to that which is within its jurisdiction the value of that which is beyond its jurisdiction and then tax the whole. The Pennsylvania Act does "really make the tax one upon property beyond its jurisdiction."

*In conclusion, let us turn to the cases upon the precise point.*

(1) There is no case in which the point was decided by this Court or any other Federal court.

The only case in which there is any specific dictum of a Justice of this Court is *Keeney vs. New York*, 222 U. S., 525, where Mr. Justice Lamar says (p. 537):

"The real estate and tangible property in Texas were not within the taxing jurisdiction of the State of New York and there was no effort to tax the transfer of that property."

(2) The decisions of the State courts are conflicting.

In *Weaver's Estate*, 110 Iowa, 328, it was held that an inheritance tax could not be imposed by the State of Iowa upon a herd of cattle which was in Missouri.

In *State vs. Brevard*, 62 N. C., 141, the testator was domiciled in North Carolina, but owned property consisting of realty and personalty in Alabama. Among his property in Alabama was The Vesuvius Furnace, which included not only the real estate, but tangible personal property about the furnace and a number of negro slaves that were bequeathed with the furnace. It was held that this tangible property could not be taxed for inheritance tax purposes in North Carolina, the state of the domicile. The decision is based upon the reasoning in the very exhaustive opinion of the Court in the earlier case of *Alvany vs. Powell*, 55 N. C., 51.

The same principle is laid down in *Joylin's Estate*, 76 Vermont, 88.

The only case cited by the State of Pennsylvania in the Supreme Court of Pennsylvania in which a court of last resort has decided that a state may levy an inheritance tax upon tangible articles outside its boundary is *Matter of Estate of Swift*, 137 N. Y., 77. This is a very curious case, for the only opinion filed is an opinion written by Mr. Justice Gray to sustain the proposition that the tax was *invalid*. But he says at the end of his opinion that his brethern do not agree

with him and that, therefore, the decision of the court below is affirmed. The case is of very little authority. All we know about it is that the Judges of the Court of Appeals of the State of New York decided that the tax was valid but gave no reason for their decision; while the only opinion filed does demonstrate quite conclusively that such articles cannot be taxed.

It should also be borne in mind that this case was decided before the clear line had been drawn by this court between tangibles and intangibles in the *Union Refrigerator Transit Company Case* and subsequent decisions. The decision was due to the failure of New York to recognize this principle, which must now be regarded as established.

While it was claimed by the counsel of defendant in error in their brief before the Supreme Court of Pennsylvania that there were two other cases (*Carpenter vs. Pennsylvania*, 17 Howard, 456, and *Hartman's Estate*, 70 N. J. Eq., 664), in which state inheritance taxes upon tangible chattels located outside of the state had been sustained by the courts, an examination of the cases themselves shows that they do not support the contention.

In the report of the case of *Carpenter vs. Pennsylvania*, 17 Howard, 456, the only reference to what the personal property was is a statement of Mr. Justice Campbell, made in delivering the opinion of this court, on page 461, which is as follows:



"In that settlement, the executor represented that a portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth \* \* \*."

There surely is nothing here to show that any of the property involved was *tangible* personal property. The case was an appeal from the Pennsylvania Supreme Court in *Short's Estate*, 16 Pa. St. Reports, 63. The statement of facts in the report of that case on page 63 states explicitly that decedent "owned a large amount invested in stock and corporations in other states, some bonds of the State of Kentucky, etc., in all exceeding half a million of dollars, and above \$1000 of cash in a bank in New York." This certainly discloses no *tangible* chattels located outside of the state. The case is therefore not authoritative for the point on which it is cited; particularly in view of the fact that there is not even any discussion in the opinion of either the Supreme Court of Pennsylvania or the Supreme Court of the United States with reference to the point involved in the instant case.

In *Hartman's Estate*, 70 N. J. Eq., 664, the only point discussed or involved in the decision was whether Mrs. Hartman was a citizen of New York or New Jersey. It was held that she was a citizen of New Jersey, and that therefore New Jersey could tax on the theory of that being her domicile. There is nothing in the report of the case to indicate that there was any tangible personal property belonging to her located in New

York, except that, as she is said to have owned a residence in New York in which she lived, one might perhaps infer that there was furniture in the house, and also infer that the furniture was assessed for inheritance tax purposes. Likewise there is some reference to her having taken her horses and carriages to Long Branch in the State of New Jersey in the summer, but there is nothing to show whether she kept them in New York City or elsewhere in the winter. It is perfectly clear that there is nothing in the case to show that New Jersey did tax these New York tangibles; and it is also clear that no question was raised by counsel or considered by the court as to whether such tangibles, if they were assessed, were or were not taxable. The sole question, as we have stated above, discussed and decided by the New Jersey Court was whether her domicile was in New Jersey or in New York.

The only other case that we know of where the question was decided is *Sherwood's Estate, State vs. Spokane & Eastern Trust Co.*, 211 Pac. Rep., 734 (Supreme Court of Washington, December 29, 1922).

In this case it was held that the State of Washington, which was the domicile of the decedent, could impose an inheritance tax upon personal property in California, although it included jewelry. The case involved a great many questions. The opinion is long. The proposition as to tangible property outside the state does not seem to have received any separate, careful consideration and is disposed of by a curt statement

"\* \* \* that the succession takes place in virtue of the laws of the place of domicile" (p. 740).

What the doctrine laid down in the instant case means is well illustrated by the case of *Hogg's Estate*, in the Orphans' Court of Allegheny County, Pennsylvania, at No. 617 September Term, 1923, decided only a few weeks ago. Hogg was domiciled in Pennsylvania and died intestate. At the time of his death he had a large amount of personal property consisting of horses, cows and other livestock, agricultural products, tools and other tangible articles located on a ranch in Montana. Letters of administration were taken out in Montana; these tangible assets were all sold by the Montana administrator, the proceeds brought into the probate court of Montana for distribution, and were by that court distributed directly to the next of kin. When the Pennsylvania administrator's account was filed, the Commonwealth of Pennsylvania made claim for inheritance tax on these Montana assets which were of the value of \$25,359. In an opinion filed October 24, 1923, by Judge Miller he refused to allow the tax, distinguishing the case from the instant (Frick) case upon the narrow ground that in the Hogg case "the domiciliary administrator in Pennsylvania never had, was not permitted to have, any control or jurisdiction of the assets in the State of Montana." Whereas in the *Frick estate*, "transmission thereof (that is, the foreign tangibles), to those entitled thereto, is under the laws of Pennsylvania." There is no real distinction between the two cases. We cite

the *Hogg case* to show the extreme to which the Commonwealth of Pennsylvania is going in its attempt to extend its taxing power, and also to show that the Pennsylvania courts are already finding it necessary to narrow and distinguish the instant (*Frick*) case in order to avoid manifestly absurd results. The real trouble is that the *Frick estate case* was wrongly decided.

This point may well be closed by quoting section 257 of a new book *The Law of the American Constitution*, by Professor Charles K. Burdick of Cornell University:

"§257. *State Inheritance Taxes on Realty and Chattels.* State inheritance taxes have become of increasing importance in recent years, and the cases in this field frequently raise the question of jurisdiction in the taxing State. In approaching this question it should be borne in mind that the inheritance tax is not a tax on property but upon the right to take or to dispose of the property involved. There is no question that the State in which real property or chattels are located may tax their transfer. It is also clear that the state of a decedent's residence cannot tax the succession to his real property located in another State. The same should be true of chattels, for in fact it is the State where the chattels are located that controls the succession, and, though States generally follow the law of the decedent's domicile with regard to the inheritance of chattels, this is a matter of comity and not of obligation, and

the privileges granted by the State of decedent's domicile have in fact no extra territorial effect. And yet the comparatively few cases in the state courts which have dealt with a tax imposed by the State of decedent's residence upon the succession to chattels (as distinguished from intangible property) located without the State have held such a tax valid. This is only supportable under the maxim *mobilia sequuntur personam*, but, as we have seen, this has been held by the Supreme Court of the United States not to apply where a tax is sought to be imposed upon the chattel itself which is outside of the taxing State, and it is reasonably to be hoped that the Supreme Court will hold that the maxim is equally inapplicable when a State seeks to impose a tax upon the succession to chattels located outside of its jurisdiction."

## POINT II.

THE STATE OF PENNSYLVANIA HAS NO POWER TO LEVY AN ESTATE TAX ON THE VALUE OF SHARES OF CAPITAL STOCK OF CORPORATIONS INCORPORATED UNDER THE LAWS OF OTHER STATES WITHOUT DEDUCTING THE PARAMOUNT TAXES EXACTED BY THOSE OTHER STATES AS A TRANSFER INHERITANCE TAX ON SUCH SHARES OF STOCK.

This point really involves the power of the State of Pennsylvania to tax the taxes imposed by other sovereignties.

The executors of Mr. Frick's will were confronted with this practical situation. They found that Mr. Frick owned shares of stock in a large number of corporations incorporated under the laws of other states. They found that they could not reduce any of those shares of stock to possession; that the corporations of those states were prohibited by the laws of the states which created them from making any transfers until the inheritance taxes of those states had been settled. And in order to get possession of those shares of stock so that they could administer them, they had to pay, for example, to the State of Kansas \$353,887.04, a paramount lien of that state on capital stock of the Atchison, Topeka & Santa Fe Railroad, before they could secure the stock and bring it into Pennsylvania for administration. Likewise, they had to pay the State of West Virginia \$329,925, a paramount tax upon the shares of stock of the Faraday Coal and Coke Company,

a corporation of West Virginia, before they could secure it and bring it into Pennsylvania for administration (Record, p. 16, Folio 27 a). The like situation confronted them in other states.

The State of Pennsylvania levied its transfer inheritance tax upon the value of these stocks as of the day of Mr. Frick's death, disregarding altogether these paramount liens. The result of this is that the estate has been compelled to pay a tax, not on their true value for administration purposes in Pennsylvania, which manifestly is their market value less the paramount tax, but upon their true value for administration purposes in Pennsylvania plus the paramount taxes.

It does not make much difference what language one uses to express this. No matter how it may be camouflaged, the result is that the State of Pennsylvania has exacted an inheritance tax, not only upon the value of the property which eventually came into its control, but upon that value plus the paramount taxes of other states. It has taxed the taxes. Its taxing officials have done this under the mandate of Section 2 of Article I of the statute (Record, p. 65, end of Folio 183 a, and beginning of Folio 184 a), which says:

"no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other state or territory."

It will be recollected that the particular language imposing the tax is that it shall be at a rate per centum upon the clear value of the

property subject to such tax, passing to or for the use of certain persons (Record, p. 65, Folio 183 a).

An attempt is made to justify this dangerous legislative policy by contending that nothing is being added to the value of the property, but that it is merely a refusal to deduct something from it.

While words may mean little, yet they may be sometimes used in a connection where they create a false impression. However what is done may be expressed, no one can controvert the fact that the State of Pennsylvania has levied a tax upon the value of that which is being administered here plus the amount actually paid to the other states in taxes. What really happened was that the executors had to take \$353,887.04 in cash which had been realized by the conversion of other assets which had already been taxed by Pennsylvania to their full value, and send the money to Kansas and pay these Kansas taxes before they could secure a release of the Kansas stock. Kansas exacted an average of nearly ten per cent as an inheritance tax on the value of the Atchison, Topeka & Santa Fe stock on the day that Mr. Frick died; and that tax had to be paid before Pennsylvania could get any hold upon, or jurisdiction over, the shares of stock. With just exactly the same propriety and with the same result, Kansas might have levied its inheritance tax in kind and taken ten per cent of the shares. If it had done so, would any one contend that the State of Pennsylvania could levy an inheritance tax upon anything except the shares (ninety per



cent of the whole) which came into Pennsylvania?

So far as we have been able to find, the only courts that have ever decided the direct point are the Pennsylvania Supreme Court in this case and the California Supreme Court in *The Matter of the Estate of Henry Miller*, 184 Calif., 674 (1921). The California Supreme Court in that case reached a conclusion in direct antagonism to the decision of the Pennsylvania Supreme Court in the instant case.

The only apparent difference between the two decisions is that the Supreme Court of Pennsylvania really gives no reason for its decision, while the Supreme Court of California does. We submit that the California decision is supported by reason and authority. Among other things, Mr. Justice Olney says at p. 683:

"The authority of the state having actual control of the subject-matter, either because it is personal property within its limits or because, as in this case, it is the stock of one of its corporations, is, of necessity, the superior. The state of the decedent's domicile can deal with the property only after the requirements of the state of its actual situs are satisfied. Putting it another way and concretely, the stock of Henry Miller in the Nevada corporation comes into his California estate, there to be administered upon and taxed, only after the requirements of Nevada are complied with, and the only thing over which California secures authority is what remains after Nevada has taken its tax."

### POINT III.

THE STATE OF PENNSYLVANIA HAS NO POWER TO LEVY AN ESTATE TAX ON THE VALUE OF THE WHOLE ESTATE WITHOUT DEDUCTING THE PARAMOUNT ESTATE TAX EXACTED BY THE UNITED STATES.

When a man dies a Federal tax attaches to all his estate. The tax is imposed upon it by reason of the cessation of his ownership of the property. *Knowlton vs. Moore*, 178 U. S., 41. The estate in this case being large, and the United States tax being graduated, the United States tax was nearly all imposed in the highest bracket; so that for the purposes of this case it may fairly be stated that the estate tax was substantially twenty-five per cent of the value of Mr. Frick's property, except the part given to charity, which is not taxable.

The refusal of the State of Pennsylvania to permit the deduction of the amount of the Federal estate tax when ascertaining the measure of its own tax on transmission of the inheritance gives rise to two related questions, which must, however, be distinguished from one another.

The first question is whether the exercise by Pennsylvania of its power to tax inheritance is inconsistent with the paramount taxing power of the United States.

In *Kirkpatrick's Estate*, 275 Pa., 271 (1922), the Supreme Court of Pennsylvania disposed of

this question in favor of the state by in effect asserting the supremacy of the state's taxing power. After referring to the power of the state to create a right to inherit, the Court observed of this right p. 276:

"It cannot be legislated out of existence or interfered with, simply because the United States sees fit to levy a graduated tax on the same subject of taxation,—a state created right."

It is to be observed that the conception of the Federal Estate tax as a tax on the right created by the State of Pennsylvania is inconsistent with the decision of this Court in *Knowlton vs. Moore*, 178 U. S., 41, which is distinctly to the effect that the Federal statute is not a tax on inheritance or transmission, but is a tax imposed upon the estate of a decedent by reason of the cessation of his ownership by death.

"The subject of the tax," the Supreme Court of Pennsylvania further declares (p. 277), "is not a matter of concurrent legislation and may be taken away by the state, leaving the United States without this subject to tax. The Federal tax is executed through its own taxing power and the Pennsylvania transfer inheritance tax is a condition imposed on the state-granted privilege—the transfer of property." *Knowlton vs. Moore* is then cited as an authority for the proposition just quoted, but is, we submit, in direct antagonism to it.

The regulation of the Treasury applicable to the Bureau of Internal Revenue with reference to this matter says:

"The transfer of property is taxable, although it escheats to the state for lack of heirs." (Article III, Regulations 63, promulgated July 7, 1922, T. D. 3384; Corporation Trust Co's War Tax Service, 1923, p. 38.)

The majority opinion of the Supreme Court of Pennsylvania in the instant case contains a verbal recognition of Federal supremacy, but takes up and carries forward the line of thought announced in *Kirkpatrick's Estate*:

"Given the fact," says the majority opinion (Record, p. 97, folio 240 a), "that a state may levy an inheritance tax on the value of the entire estate of a decedent, even though part of it consists of United States bonds (*Plummer vs. Coler*, 178 U. S., 115; *Orr vs. Gillman*, 183 U. S., 278) it necessarily follows that in determining the way in which this tax shall be computed it may, subject to constitutional provisions, refuse to allow any deduction for taxes paid to the United States and other states."

It is to be noted that the reason for permitting the inclusion in an estate subject to the inheritance tax of bonds of the United States is that the tax is not a tax upon property, and therefore not a tax upon the obligations of the Federal Government. The Supreme Court of Penn-

sylvania appears to infer from this undoubtedly sound proposition that the state may proceed to tax an inheritance as it pleases, even to the extent of depriving the United States of all source of payment for the Federal inheritance tax.

Additional support for this contention is sought by the majority opinion in *Bankers Trust Co. vs. Blodgett*, 260 U. S., 647, from which the following inference is drawn (Record, p. 97, folio 240 a):

"Hence the method of calculating the amount to be paid must necessarily be one for legislative consideration, for, as there stated, 'the power of taxation with its accessorial sanctions, is a power of government, and all property is subject to it.'"

The *Blodgett case* was concerned with the right of a state to prevent tax evasion by imposing upon the estate of a decedent liability for taxes which ought to have been paid in his lifetime. It has no relation to the question under consideration, though the inference sought to be drawn from it by the Supreme Court of Pennsylvania appears to be that the method of calculating the amount of a tax rests in the unreviewable legislative discretion of the state. We submit that this assertion of the supremacy of the taxing power of the state is wholly at variance with the paramount rights of the United States, and cannot possibly be justified.

As if to relieve the rigor of this contention, the Supreme Court of Pennsylvania seeks to save

itself by the following statement (Record, p. 97, folio 240):

"If the question of priority of right ever arises,—which American history since 1865 renders extremely doubtful,—the contention now made may become important; it does not arise here; in fact the Federal Estate Tax has long since been paid, while Pennsylvania is still seeking to collect the amount due to her."

We submit, to the contrary, that the question here presented is a question involving a constitutional principle. A state statute sustainable only upon a theory inconsistent with Federal supremacy is invalid *per se*, even if in a particular case there happens to be enough money to pay the demands of both sovereignties.

The second question raised by the refusal of Pennsylvania to allow the deduction of the Federal tax is a question concerning the due process of law clause in the fourteenth amendment. That clause forbids unjust methods of measuring a tax otherwise lawful, just as surely as it condemns tax exactions which have no lawful basis at all. A tax on a thing over which the state has jurisdiction may be void because it is confiscatory, just as clearly as a state tax law is void if it attempts to reach for taxation property beyond the jurisdiction of the state.

A franchise tax attempted to be imposed by a state upon a foreign corporation doing no business in that state would be void for lack of jurisdiction to tax.

A franchise tax laid by a state upon a corporation created under its own laws, and therefore within its jurisdiction, would likewise be invalid if the measure of the tax were to include the value of a franchise derived by the corporation under a grant from another state. This was the ground of the decision in *Louisville Ferry Co. vs. Kentucky*, 188 U. S., 385.

We repeat our assertion that it is unconstitutional to measure a state transmission tax by including the value of tangible personalty which is transmissible only under the law of another state.

In like manner, we assert that by conferring upon the Congress the power of estate taxation, we have disabled the several states from taxing as if transmitted to the heir that part of the estate which the Federal Government in fact appropriates.

Having thus called attention to the distinct, but related, questions presented by this branch of the case, we turn to the cases in which this subject has been discussed, and in which the two questions are dealt with, but not always with discrimination.

Let us turn first to the history of this principle as applied to this act as disclosed by the Pennsylvania decisions.

Prior to the enactment of the present Act of April, 1919, Pennsylvania had an inheritance tax act which imposed a tax upon "the clear value" of the estate, just as the present act does. Under that statute the Supreme Court of Pennsylvania held that, in ascertaining the clear value of the

estate, the Federal estate tax must be deducted. *Knight's Estate*, 261 Pa., 537. The present act undertook to change the law by saying (Record, page 65, beginning of Folio 184 a) that, in ascertaining the clear value of the estate, no deduction should be allowed on account of taxes paid on the estate to the government of the United States.

This presented at once a constitutional question under the Fourteenth Amendment, to wit, Is it due process of law to ascertain the value of property for the purposes of assessing a transfer inheritance tax thereon without deducting the Federal tax, and is such a course also not a violation of and an infringement upon paramount powers of the Federal government. The question first came up in the Orphans' Court of Philadelphia in *Jennie Smith's Estate*, 29 Pa. District Reports, 917, where Judge Gest held that the state had no power to do this. Judge Gest put it this way (p. 921):

"It thus appears that the provision of the Act of 1919 is an attempt to tax the sum of \$20,866.52 seized and deducted from this estate by the paramount authority and power of the Federal Government, and to this extent the presiding judge is of opinion that it transcends the power of the legislature."

This decision was followed by all the courts of Pennsylvania and acquiesced in by the state until *Kirkpatrick's Estate* came up in the Orphans' Court of Allegheny County (Pittsburgh) when



the state again raised the point. It was considered by the Orphans' Court of Allegheny County, and Judge Miller reached the same conclusion. Judge Miller puts it this way: "How can the State of Pennsylvania, by the legislation in question, collect a tax on that which no longer exists, as a duty on the clear value of what is left passing to the beneficiary?" That case was appealed by the Commonwealth of Pennsylvania and reversed. *Kirkpatrick's Estate*, 275 Pa., 271, to which we have already referred.

The instant case was heard in the Supreme Court of Pennsylvania before five justices out of the seven who constitute the court. The opinion was rendered by Justice Simpson and was concurred in by Chief Justice Von Moschzisker, Justices Walling and Kephart. Justice Frazier dissented, and filed a dissenting opinion. He says (Record, page 106, Folio 259):

"If we concede the state tax is on the right to transmit the property and not on the property itself, still the total estate has been depleted by the amount of the federal tax and it is only the balance thus remaining decedent has a right to transfer and if the total estate is taken as the basis of the state tax, the effect is to give the state a revenue derived from a fund set aside for the benefit of the United States."

Other learned judges have been impressed by the same thought.

Mr. Justice Sweeney, in his dissenting opinion in *Hazard vs. Bliss*, 43 Rhode Island, 431 (1921), expresses the same idea as follows:

"By operation of Federal law the net estate left by the decedent has been depleted by the amount of the tax and the deceased was deprived of the right to transfer so much of his net estate as would be required to pay the Federal Estate tax. The decedent had the right to dispose of only so much of his net estate as would be left after the deduction and payment of the Federal tax and the residuary legatee had the right to receive from the decedent only so much of his estate as would be left after the deduction and payment of the Federal Estate tax."

So Chief Justice Rugg in Massachusetts, in the case of *Hollis vs. Treasurer and Receiver General*, 242 Mass., 163 (1922), says:

"Such a tax, apart from its technical legal significance, would be in substance and effect a tax on a tax and not a tax on the succession of property."

When we examine the decisions of this court in

*McCulloch vs. State of Maryland*, 17 U. S., 315;

*Weston vs. City of Charleston*, 27 U. S., 448;

*Dobbins vs. Erie County*, 41 U. S., 434;

*Bank of Commerce vs. New York City*, 67 U. S., 620;

- Crandall vs. State of Nevada*, 73 U. S., 35;  
*Collector vs. Day*, 78 U. S., 113;  
*Ward vs. Maryland*, 79 U. S., 418;  
*Railroad Company vs. Peniston*, 85 U. S., 5;  
*Arnsen vs. Murphy*, 109 U. S., 238;  
*United States vs. Snyder*, 149 U. S., 210;  
*Owensboro National Bank vs. Owensboro*, 173 U. S., 664;  
*Flaherty vs. Hanson*, 215 U. S., 515;  
*Farmers Bank vs. Minnesota*, 232 U. S., 516;  
*Johnson vs. Maryland*, 254 U. S., 51;  
*Smith vs. Kansas City Title Co.*, 255 U. S., 212;

what do we find? We deduce from these cases just what Justice Frazier deduced, and, paraphrasing the language of Mr. Justice White in *Flaherty vs. Hanson* (*supra.*), we say, 'when the state imposes such a tax, it immediately and directly places a burden upon the person who pays the United States tax, because of the payment of the tax; therefore it cannot be done.'

The State of Pennsylvania cannot directly impose a tax upon the portion of Mr. Frick's estate which the Federal Government has expropriated. It cannot do this, whether the Federal Government took it in kind or whether it took it in money. If it cannot do it directly, it cannot do it indirectly. It cannot accomplish this prohibited thing either by adding the amount of the Federal tax to the value of the taxable thing or,

if you prefer to use other language, by valuing the whole estate, that which the United States took and that which it left, and imposing a tax upon the whole without "deducting" the value of that which the United States took.

Respectfully submitted,

GEORGE WHARTON PEPPER,

GEORGE B. GORDON,

*Attorneys for Plaintiffs in  
Error.*





OCT 1 1923

WM. R. STEPHENSON

IN THE

# SUPREME COURT OF THE UNITED STATES

122  
No. ~~442~~ October Term, 1923.

HELEN C. FRICK, Plaintiff-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

## MOTION TO ADVANCE.

DAVID A. REED,  
Attorney for Defendant in Error.

James McMillin Printing Company, Penn. Ave. and Barbeau St., Pittsburgh, Pa.

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IN THE

# SUPREME COURT OF THE UNITED STATES

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No. 442 October Term, 1923.

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HELEN C. FRICK, Plaintiff-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

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## Notice of Motion to Advance.

Sirs:

Please take notice that upon the annexed statement of matter involved and reasons for the motion, and upon all the papers and proceedings herein, I shall, on Monday, the 1st day of October, 1923, and if motions are not then heard, then at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof to be held in the Capitol, in the City of Washington, District of

Columbia, the motion, a copy of which is hereunto annexed.

Pittsburgh, Pennsylvania, September 3, 1923.

DAVID A. REED,  
*Counsel for Commonwealth of Pennsylvania,*  
*Defendant in Error.*

To

George Wharton Pepper, Esq., and  
George B. Gordon, Esq.,  
Attorneys for Plaintiff in Error.

Service of the foregoing notice and of the within motion, statement of matter involved, and reasons for the motion, is hereby accepted, and plaintiff in error, by the undersigned, her counsel, hereby certifies that she has no objection to the granting of said motion, or to the entry of an order fixing such date for argument of the above entitled case as to the Court may seem proper.

Dated, September 3, 1923.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Plaintiff in Error.*

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IN THE  
SUPREME COURT OF THE UNITED STATES.

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No. 442 October Term, 1923.

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HELEN C. FRICK, *Plaintiff-in-Error*,

vs.

COMMONWEALTH OF PENNSYLVANIA, *Defendant-in-Error*.

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**Motion to Advance.**

And now comes the Commonwealth of Pennsylvania, the defendant in error above named, by David A. Reed, its counsel, and moves that the above entitled case be advanced for argument to such date as this Court may direct.

DAVID A. REED,  
*Attorney for Defendant in Error.*

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### **Statement of Matter Involved.**

The case is here on writ of error to the Supreme Court of Pennsylvania and on petition for writ of *certiorari* to review the decision of that court.

The precise issue is the amount of inheritance tax payable to the State of Pennsylvania by the estate of Henry C. Frick, deceased, who was a resident of Pennsylvania at the time of his death.

As construed by the Pennsylvania courts, the Act of June 20, 1919, Pamphlet Laws 521, being the inheritance transfer tax law of the State, provides that the transfer of tangible personalty owned by a resident decedent but situate outside the state at the time of death is taxable. The statute provides further that in ascertaining the value of estates transferred "no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." Accordingly, the Supreme Court of Pennsylvania decided that the transfer of Mr. Frick's tangible personalty in New York and Massachusetts was subject to tax, and decided further that no deduction should be allowed for amounts paid or payable by the estate to the United States and other jurisdictions as inheritance taxes.

Plaintiff in error contends that this decision was wrong, because the statutory provisions on which it was

predicated are unconstitutional and void. It is alleged that those provisions, or one or other of them, are in conflict with the clauses of Article XIV, Section 1, of the Constitution of the United States prohibiting any State to deprive any person of property without due process of law and to deny to any person the equal protection of the laws; and in conflict, also, with Article I, Section 8, of the Constitution of the United States in that they interfere with the power of Congress to levy and collect taxes; and in conflict, finally, with that clause of Article VI of the Constitution of the United States which provides that said Constitution and the laws of the United States in pursuance thereof shall be the supreme law of the land.

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**Reasons for the Motion.**

1. The defendant in error is a State.
  2. Under the decision to be reviewed, the sum payable to the State of Pennsylvania is \$1,185,158.14, together with interest at six per cent. per annum from the second day of December, 1920. Article IX, Section 4, of the State Constitution provides that the State cannot create a debt except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt, and the aggregate debt created to supply deficiencies of revenue cannot at any time exceed \$1,000,000. In view of the amount involved and the debt limitations imposed by the State Constitution, the interest of the State requires a determination of this controversy at as early a date as practicable.
  3. The State authorities, in the course of their duties, are required continually to apply the transfer inheritance tax law and to compute the amount of tax due thereunder from the estates of decedents, and until the issues raised herein are decided, such computations, and payments of amounts fixed by them, cannot be made without doubts as to their correctness. This situation causes great inconvenience to the State authorities and to many persons who are administering decedents' estates.
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THE UNITED STATES

1877



FILED  
OCT 1 1923

WAL. B. STANSBURY

IN THE

# SUPREME COURT OF THE UNITED STATES

123  
No. ~~443~~ October Term, 1923.

HELEN C. FRICK, Plaintiff-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

## MOTION TO ADVANCE.

DAVID A. REED,  
Attorney for Defendant in Error.

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IN THE

**SUPREME COURT OF THE UNITED STATES**

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No. 443 October Term, 1923.

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DAVID A. REED,  
*Counsel for Commonwealth of Pennsylvania,*  
*Defendant in Error.*

To

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Dated, September 3, 1923.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Plaintiff in Error.*

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IN THE  
SUPREME COURT OF THE UNITED STATES.

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No. 443 October Term, 1923.

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VS.

COMMONWEALTH OF PENNSYLVANIA, *Defendant-in-Error*.

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*Attorney for Defendant in Error.*

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Plaintiff in error contends that this decision was wrong, because the statutory provisions on which it was

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### **Reasons for the Motion.**

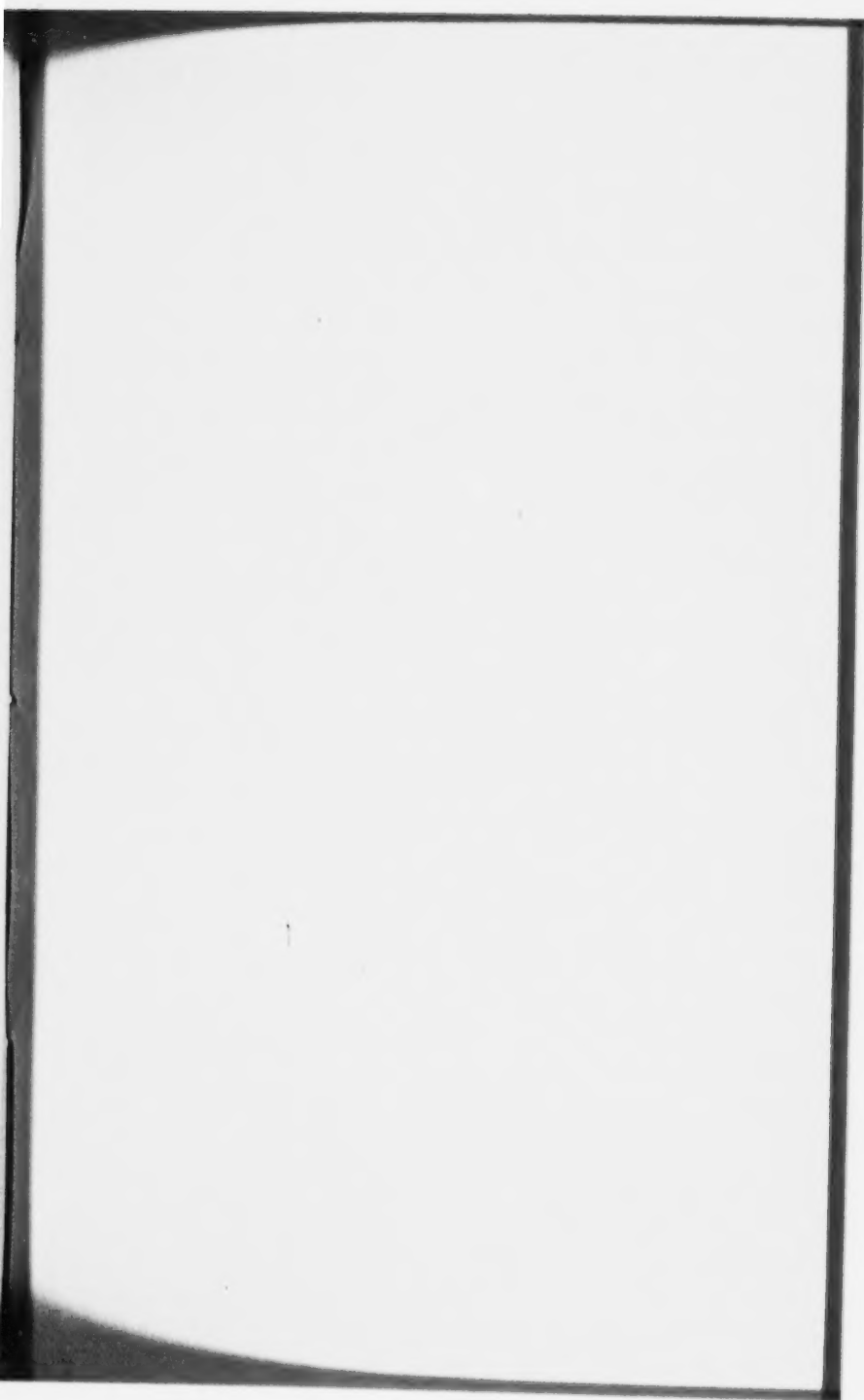
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OCT 1 1923

W. B. STANSBURY  
CLERK

IN THE  
  
**SUPREME COURT OF THE UNITED STATES**

124  
No. 444 October Term, 1923.

ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS  
FRICK, HENRY C. McELDOWNEY and WILLIAM WAT-  
SON SMITH, EXECUTORS OF THE LAST WILL AND  
TESTAMENT OF HENRY C. FRICK, DECEASED,  
Plaintiffs-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

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**MOTION TO ADVANCE.**

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DAVID A. REED,  
Attorney for Defendant in Error.

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IN THE

# SUPREME COURT OF THE UNITED STATES

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No. 444 October Term, 1923.

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*Defendant in Error.*

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GEORGE B. GORDON,  
*Attorneys for Plaintiffs in Error.*

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ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK,  
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SMITH, Executors of the Last Will and Testament  
of HENRY C. FRICK, Deceased, *Plaintiffs-in-Error*,

VS.

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**Reasons for the Motion.**

1. The defendant in error is a State.

2. Under the decision to be reviewed, the sum payable to the State of Pennsylvania is \$1,185,158.14, together with interest at six per cent. per annum from the second day of December, 1920. Article IX, Section 4, of the State Constitution provides that the State cannot create a debt except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt, and the aggregate debt created to supply deficiencies of revenue cannot at any time exceed \$1,000,000. In view of the amount involved and the debt limitations imposed by the State Constitution, the interest of the State requires a determination of this controversy at as early a date as practicable.

3. The State authorities, in the course of their duties, are required continually to apply the transfer inheritance tax law and to compute the amount of tax due thereunder from the estates of decedents, and until the issues raised herein are decided, such computations, and payments of amounts fixed by them, cannot be made without doubts as to their correctness. This situation causes great inconvenience to the State authorities and to many persons who are administering decedents' estates.

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WAS R. STANSBURY

IN THE

# **SUPREME COURT OF THE UNITED STATES**

<sup>125</sup>  
No. **445** October Term, 1923.

**ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS  
FRICK, HENRY C. McELDOWNEY and WILLIAM WAT-  
SON SMITH, EXECUTORS OF THE LAST WILL AND  
TESTAMENT OF HENRY C. FRICK, DECEASED,**  
Plaintiffs-in-Error,

vs.

**COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.**

## **MOTION TO ADVANCE.**

**DAVID A. REED,**  
Attorney for Defendant in Error.

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IN THE

**SUPREME COURT OF THE UNITED STATES**

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No. 445 October Term, 1923.

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FRICK, HENRY C. McELDOWNEY and WILLIAM WAT-  
SON SMITH, EXECUTORS OF THE LAST WILL AND  
TESTAMENT OF HENRY C. FRICK, DECEASED,  
Plaintiffs-in-Error,

vs.

COMMONWEALTH OF PENNSYLVANIA, Defendant-in-Error.

---

**Notice of Motion to Advance.**

Sirs:

Please take notice that upon the annexed statement of matter involved and reasons for the motion, and upon all the papers and proceedings herein, I shall, on Monday, the 1st day of October, 1923, and if motions are not then heard, then at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof to be held in the Capitol, in the City of Washington, District of

Columbia, the motion, a copy of which is hereunto annexed.

Pittsburgh, Pennsylvania, September 3, 1923.

DAVID A. REED,  
*Counsel for Commonwealth of Pennsylvania,*  
*Defendant in Error.*

To

George Wharton Pepper, Esq., and  
George B. Gordon, Esq.,  
Attorneys for Plaintiffs in Error.

Service of the foregoing notice and of the within motion, statement of matter involved, and reasons for the motion, is hereby accepted, and plaintiffs in error, by the undersigned, their counsel, hereby certify that they have no objection to the granting of said motion, or to the entry of an order fixing such date for argument of the above entitled case as to the Court may seem proper.

Dated, September 3, 1923.

GEORGE WHARTON PEPPER,  
GEORGE B. GORDON,  
*Attorneys for Plaintiffs in Error.*

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IN THE  
SUPREME COURT OF THE UNITED STATES.

---

No. 445 October Term, 1923.

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ADELAIDE H. C. FRICK, HELEN C. FRICK, CHILDS FRICK,  
HENRY C. McELDOWNEY and WILLIAM WATSON  
SMITH, Executors of the Last Will and Testament  
of HENRY C. FRICK, Deceased, *Plaintiffs-in-Error*,

VS.

COMMONWEALTH OF PENNSYLVANIA, *Defendant-in-Error*.

---

**Motion to Advance.**

And now comes the Commonwealth of Pennsylvania, the defendant in error above named, by David A. Reed, its counsel, and moves that the above entitled case be advanced for argument to such date as this Court may direct.

DAVID A. REED,  
*Attorney for Defendant in Error.*

---

### **Statement of Matter Involved.**

The case is here on writ of error to the Supreme Court of Pennsylvania and on petition for writ of *certiorari* to review the decision of that court.

The precise issue is the amount of inheritance tax payable to the State of Pennsylvania by the estate of Henry C. Frick, deceased, who was a resident of Pennsylvania at the time of his death.

As construed by the Pennsylvania courts, the Act of June 20, 1919, Pamphlet Laws 521, being the inheritance transfer tax law of the State, provides that the transfer of tangible personalty owned by a resident decedent but situate outside the state at the time of death is taxable. The statute provides further that in ascertaining the value of estates transferred "no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or Territory." Accordingly, the Supreme Court of Pennsylvania decided that the transfer of Mr. Frick's tangible personalty in New York and Massachusetts was subject to tax, and decided further that no deduction should be allowed for amounts paid or payable by the estate to the United States and other jurisdictions as inheritance taxes.

Plaintiffs in error contend that this decision was wrong, because the statutory provisions on which it was

predicated are unconstitutional and void. It is alleged that those provisions, or one or other of them, are in conflict with the clauses of Article XIV, Section 1, of the Constitution of the United States prohibiting any State to deprive any person of property without due process of law and to deny to any person the equal protection of the laws; and in conflict, also, with Article I, Section 8, of the Constitution of the United States in that they interfere with the power of Congress to levy and collect taxes; and in conflict, finally, with that clause of Article VI of the Constitution of the United States which provides that said Constitution and the laws of the United States in pursuance thereof shall be the supreme law of the land.

---

**Reasons for the Motion.**

1. The defendant in error is a State.

2. Under the decision to be reviewed, the sum payable to the State of Pennsylvania is \$1,185,158.14, together with interest at six per cent. per annum from the second day of December, 1920. Article IX, Section 4, of the State Constitution provides that the State cannot create a debt except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt, and the aggregate debt created to supply deficiencies of revenue cannot at any time exceed \$1,000,000. In view of the amount involved and the debt limitations imposed by the State Constitution, the interest of the State requires a determination of this controversy at as early a date as practicable.

3. The State authorities, in the course of their duties, are required continually to apply the transfer inheritance tax law and to compute the amount of tax due thereunder from the estates of decedents, and until the issues raised herein are decided, such computations, and payments of amounts fixed by them, cannot be made without doubts as to their correctness. This situation causes great inconvenience to the State authorities and to many persons who are administering decedents' estates.

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IN THE  
Supreme Court of the United States

HELEN C. FRICK,  
Plaintiff in Error, } 122  
vs.  
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HELEN C. FRICK,  
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ADELAIDE H. C. FRICK, et al.,  
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vs.  
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ADELAIDE H. C. FRICK, et al.,  
Executors, Plaintiffs in Error, } 125  
vs.  
COMMONWEALTH OF PENNSYLVANIA. } No. ~~445~~ October Term, 1923.

Brief for Defendant in Error.

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IN THE

# Supreme Court of the United States

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HELEN C. FRICK, Plaintiff in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	}	No. 442 October Term, 1923.
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ADELAIDE H. C. FRICK, et al., Executors, Plaintiffs in Error, vs. COMMONWEALTH OF PENNSYLVANIA.	}	No. 445 October Term, 1923.

---

## Brief for Defendant in Error.

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### Statement of the Case.

All the cases are in this Court on writ of error to the Supreme Court of Pennsylvania. They involve the same facts and the same questions of law.

Henry C. Frick died on the second day of December, 1919. He was domiciled in Pennsylvania during his entire lifetime, and his will was duly admitted to probate in Allegheny County.

The aggregate value of his real estate in Pennsylvania and his personal property wherever situate was \$89,675,098.45. Of his personal estate, \$13,132,391.00 in value thereof consisted of tangibles, principally pictures and other objects of art, situate in the State of New York at the time of his decease and bequeathed to the Frick Collection, a corporation, for purposes of public exhibition in the City of New York. The estate also included \$403,353.00 of tangible personal property, such as furniture, household equipment, and the like, part of which was situated in New York and part in Massachusetts. The value of all tangible personalty situated in New York and Massachusetts has been included by the Pennsylvania tax authorities in the measure of the Pennsylvania transfer inheritance tax (Rec. pp. 3 to 4, 17 to 19, 51).

The language used by plaintiffs in error in stating the questions for argument implies that the property bequeathed to the Frick Collection had a "permanent" situs in the State of New York. As the property was personal property, we do not think it material whether its foreign situs was or was not "permanent", but lest some argument be predicated on the suggestion that these objects of art had a fixed situs in New York prior to Mr. Frick's death, we call attention to the following statement of fact, made part of the evidence by stipulation (Rec. p. 17) :

"These works of art were largely antiques and of European and Asiatic origin and before their purchase by Mr. Frick had passed through the ownership of many successive persons and had often been moved from place to place in Europe, Asia and America. Up to the time of his death it continued to be Mr. Frick's practice to sell or exchange works

of art which he owned, usually replacing them with others that he considered more desirable."

Thus the articles which were to comprise the collection for public exhibition were not determined until the death of the testator, and did not have a fixed or permanent situs prior to that time.

The sum of \$6,338,898.68 has been paid to the Federal government as estate tax, and large sums of money have been paid or will be paid to the State of Pennsylvania and other states as inheritance taxes. Those taxes have been paid from the residuary estate, pursuant to Article VIII of the will (Rec. p. 58). The tax authorities of Pennsylvania have refused to deduct them prior to computation of the Pennsylvania tax.

The inclusion of the value of New York and Massachusetts tangibles in the measure of the tax, and the refusal to deduct the amount of inheritance taxes paid to other jurisdictions and to Pennsylvania, were in accordance with provisions of the Pennsylvania statute as construed by the Supreme Court of that State.

The contentions of plaintiffs in error are two: first, that the provision for the inclusion of foreign tangibles in the measure of the Pennsylvania transfer inheritance tax is in conflict with the due process clause of the XIVth Amendment, and therefore invalid; second, that the provision prohibiting the deduction of inheritance taxes paid to the United States, to Pennsylvania, and to other jurisdictions prior to computation of the Pennsylvania tax is an unconstitutional interference with the taxing power of the Federal government, and is also in violation of the due process clause of the XIVth Amendment.

## Argument.

### I.

THE STATE OF DOMICILE OF A DECEDENT MAY INCLUDE IN THE MEASURE OF ITS TRANSFER INHERITANCE TAX THE VALUE OF ALL THE PERSONAL PROPERTY OF SUCH DECEDENT, INCLUDING TANGIBLES SITUATED IN OTHER STATES.

It is a fundamental principle that real estate descends pursuant to the law of its situs, without any reference whatsoever to the law of the owner's domicile, and that personal property, whether tangible or intangible, and wheresoever situate, descends pursuant to the law of the owner's domicile. If a resident of New York (whose law requires but two witnesses to a will) makes a will with only two witnesses, realty situated in a state requiring three witnesses will not pass. But *tangible personalty*, unlike real estate, descends in the manner provided by the law of the domiciliary state; thus, in the illustration, tangible personalty situated in a state requiring three witnesses would pass, even though the will were witnessed by only two persons. The law of the domicile, therefore, may impose upon the transfer of tangible personalty, either by will or by intestate succession, such conditions by way of taxation or otherwise as it may deem expedient, provided the conditions are not forbidden by constitutional restrictions. It is mere metaphysics to argue whether the transfer is effected by *virtue* of the law of the situs or the law of the domicile; the *fact* is that tangible personal property passes *according to and to no greater extent than pro-*



vided by the law of the domicile. Wherever the property may be, the court administering it looks first to the law of the domicile.

That principle, which is the basis of the Pennsylvania tax, was thus stated by Mr. Justice Holmes in *Bullen vs. Wisconsin*, 240 U. S. 625:

"The power to tax is not limited in the same way as the power to affect the transfer of property. If this fund had passed by intestate succession, it would be recognized that by the traditions of our law the property is regarded as a *universitas* the succession to which is incident to the succession to the *persona* of the deceased. As the states where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, *in a practical sense at least, the law of the domicil is needed to establish the inheritance*. Therefore the inheritance may be taxed at the place of domicil, whatever the limitations of power over the specific chattels may be, as is especially plain in the case of contracts and stock." (Italics ours.)

It is admitted at the outset that Pennsylvania may not constitutionally impose a tax upon tangible personal property situated outside the State.

*Union Refrigerator Transit Company vs. Kentucky*, 199 U. S. 194.

But the Pennsylvania tax is not imposed upon any specific property whatever. A sum of money computed

upon the value of the estate, such value being determined as of the date of death, is lawfully exacted by the Commonwealth for a privilege created by statute. The tax is an excise upon the privilege of transfer. It is not upon the privilege of receiving—affirmative legislation is not needed to permit acceptance of a gift—but upon the statutory privilege of transferring or transmitting property by will or intestacy.

The Supreme Court of Pennsylvania, construing the Act of the Legislature of Pennsylvania, has so defined and described this tax (Record, pp. 100-101; *Kirkpatrick's Estate*, 275 Pa. 271). Their construction will be accepted by this Court unless it is a plain disregard of the words of the Act and makes use of an incorrect definition to effect an evasion of constitutional inhibitions. That is to say, if the Act actually provided for a tax on property beyond the boundaries of Pennsylvania, the fact that the state court defined it as an excise upon the privilege of transfer would not save its constitutionality.

*International Paper Company vs. Massachusetts*, 246 U. S. 135.

Obviously, however, no such incorrect construction has been made here.

The nature of inheritance taxes of all types received a very full discussion in *Knowlton vs. Moore*, 178 U. S. 41, from which it appears that inheritance taxes have seldom, if ever, taken the form of taxes on property. In that case Mr. Justice White said at page 47:

"Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal, as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passing of the property as the result of death as distinct from a tax on property dissociated from its transmission or receipt by will, or as the result of intestacy."

To like effect are:

*United States vs. Perkins*, 163 U. S. 625;  
*Magoun vs. Illinois Trust & Savings Bank*, 170  
U. S. 283.

That such transfer inheritance taxes are not property taxes is necessarily implied in the conclusion that United States bonds or other clearly non-taxable securities are properly included in the property upon which the tax is computed.

*Plummer vs. Coler*, 178 U. S. 115.

Similarly, no one has doubted that the Federal inheritance tax should be computed upon the obligations of a state, which the Federal government may not tax directly.

It is clear, therefore, that in holding the tax not to be on property, but rather an excise upon the privilege of transfer, the State Supreme Court has not undertaken to save an invalid property tax by incorrectly denominating it an excise. *International Paper Company vs. Massachusetts*, *supra*, has no application to this case.

Since a transfer inheritance tax is not a property tax, and since property which, by reason of its tax-exempt character, is beyond the jurisdiction of the taxing state may be included in the property upon the value of which the tax is computed, it would seem to follow as a corollary that personal property which, by reason of its geographical situation, is beyond the jurisdiction of the taxing state may, under some circumstances, be included. The case of *Maxwell vs. Bugbee*, 250 U. S. 525, arose under the inheritance tax statute of New Jersey, which provided for a tax graduated according to the value of the estate, and provided further that in respect to the property of a nonresident situated in New Jersey, the *rate* of tax should be determined by the value of the total estate wherever situate, and that the *amount* of the tax should be that proportion of what the total tax would be if the entire estate were situated in New Jersey which the New Jersey estate of the decedent bore to the entire estate wherever situated. The statute was held to be constitutional. Even a state other than that of the domicile, therefore, need not wholly disregard foreign personality.

The cases pertinent to the question of what property is or is not subject to state transfer inheritance tax may be classified as follows, so far as the classification has reference to the situs of the property:

1. Where the situs of the property transferred is outside the taxing state, and the decedent was a non-resident of the taxing state. The transfer is not taxable.

*Hood's Estate*, 21 Pa. 106.

2. Where the property is real estate situated outside the taxing state. The transfer is not taxable, even though the taxing state is the state of decedent's domicile. The reason is, of course, that realty descends without reference to any law except that of the situs.

*DeWitt's Estate*, 266 Pa. 548;

*Marr's Estate*, 240 Pa. 38.

3. Where the property is intangible, as stocks of foreign corporations, or other securities kept outside the taxing state, which is also the state of decedent's domicile. The transfer is taxable, since the property passes according to the law of the domiciliary state.

*Bullen vs. Wisconsin*, 240 U. S. 625.

4. Where the property is intangible, as stocks of a domestic corporation or a debt owed by a resident of the taxing state to the decedent, who was a nonresident of that state. Since the taxing state has jurisdiction of and control over the corporation whose stock is in question, or the person of the debtor, the transfer is taxable.

*Blackstone vs. Miller*, 188 U. S. 189.

*Greves vs. Shaw*, 173 Mass. 205;

*Hostetter's Estate*, 267 Pa. 193;

5. Where the property is a chose-in-action and therefore intangible, but is evidenced by a promissory note and hence has no existence apart from the paper upon which the obligation is written, and the paper has an actual physical situs within the taxing state. There, even though the deceased holder of the note was a non-

resident of the taxing state, and the maker is also a nonresident, the note itself is within the control of the taxing state, and the transfer of it may be taxed.

*Wheeler vs. Sohmer*, 233 U. S. 434.

6. Where the property is tangible personalty situated in the taxing state, of which the decedent was a nonresident. Since the property is within the jurisdiction and control of the taxing state, the transfer is taxable.

*Coe vs. Erroll*, 116 U. S. 517;

*Blackstone vs. Miller*, 188 U. S. 189.

7. Where the taxing state is also the state of the decedent's domicile, and where the property is tangible personalty having a situs outside the state,—the case at bar. There again the transfer is taxable. In *Blackstone vs. Miller*, *supra*, Mr. Justice Holmes, in the opinion of the Court, said:

"To come closer to the point, *no one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession from the law of the domicil, or that by the law of the domicil the chattel is part of a universitas and is taken into account again in the succession tax there.*" (Italics ours.)

In *Bullen vs. Wisconsin*, 240 U. S. 625, it was held that the domiciliary state could constitutionally impose an inheritance tax on the transfer of bonds kept outside the state. In that case, the Court has ruled the case at bar, because the obligation of a bond, like the obligation of a promissory note but unlike the property

represented by a stock certificate, has no existence apart from the paper upon which the obligation is written.

*Wheeler vs. Sohmer*, 233 U. S. 434;  
*Blackstone vs. Miller*, 188 U. S. 189, 206.

In *Carpenter vs. Pennsylvania*, 17 How. 456, it was held that personal property situated outside the domiciliary state was subject to the inheritance tax thereof. The property expressly described in the report consisted of intangibles. It is not altogether clear whether any tangible property was involved, but the opinion does not suggest that the point would be material.

In *Hartman's Estate*, 70 N. J. Eq. 664, it was squarely held that the transfer of tangible personalty owned by a resident decedent but situated outside the state was taxable. In *Swift's Estate*, 137 N. Y. 77, the Court of Appeals of New York, with one dissent, reached the same conclusion. The same decision was reached by the Supreme Court of Washington in *Sherwood's Estate*, decided December 29, 1922, and reported in 211 Pac. Rep. 734.

In *Weaver's Estate*, 110 Iowa 328, it was held that the transfer of certain tangibles having a foreign situs was not subject to state inheritance tax, but the decision was based entirely upon the intent of the legislature as expressed in the statute—it seems to have been conceded that if the statute had in fact provided for a tax on the transfer of foreign tangibles it would still have been a valid statute.

The law of England is in accord with the authorities above cited. In *Matter of the Estate of Ewin*, 1 Crompton and Jervis, 150 (1830), the Court of Exche-

quer held that American, Austrian, French, and Russian stocks owned by a decedent domiciled in England were subject to English legacy duties. In *Attorney General vs. Napier*, 6 Exchequer Reports, 216 (1851), a case where the decedent was an army officer domiciled in England but on duty in India at the time of his death, the same rule was applied to tangibles in India.

In *Re Duchess of Manchester*, Law Journal Reports, New Series, Vol. 81, page 329 (1912), the rule of *Attorney General vs. Napier* was again applied. The Duchess of Manchester, domiciled in England, provided in her will that certain individuals in England should be executors in respect to property in England, and that certain other individuals, in America, should be executors of the will in respect to property in America. The Chancery Division held that all personalty in America was subject to estate tax in England and, moreover, that the executors in England were bound to pay the tax, even though the property in America was never to come into their possession. Mr. Justice Swinfen Eady said:

“It is well established that whether legacy or succession duty is payable in respect of personal property depends on the domicile of the testator, and is not affected by the question where the property may happen to be locally situate at the death.”

Thus far no reference has been made to the maxim *mobilia sequuntur personam*. Such reference has been purposely omitted, because the maxim is sometimes called a “fiction”, and it is not desired to base this argument upon fiction, but upon fact. The fact is that though the tangible personalty here in question is situ-



ated in New York and Massachusetts, it cannot be transferred by inheritance except with reference to the provisions of Pennsylvania law. That fact, stated by Mr. Justice Holmes in *Bullen vs. Wisconsin*, *supra*, by the proposition that "the law of the domicil is needed to establish the inheritance", cannot be gainsaid.

The theory of plaintiffs in error is that Massachusetts and New York statutes have incorporated Pennsylvania law by reference, thereby changing it to Massachusetts or New York law. Our own theory is that by the comity of states (in this case evidenced by statutes) and the traditions of Anglo-Saxon jurisprudence, the domiciliary law is given extra-territorial effect in this situation. But whether the correct explanation be the one theory or the other, there can be no doubt of the fact, namely, *that the transfer of this property cannot be effected without reference to the provisions of Pennsylvania law*. That law is "*needed to establish the inheritance.*"

Plaintiffs in error lay special emphasis on the fact that statutes of New York and Massachusetts provide in express words that the property shall pass according to Pennsylvania law. But can it be doubted that the provisions of Pennsylvania law would be given effect in New York and Massachusetts even in the absence of such statutes? The statutes are merely declaratory of a familiar principle. If they provided, as they do not provide, that the law of the domiciliary state should be ignored, as in the case of realty, and that all tangible personal property in New York and Massachusetts should pass in accordance with the laws of New York and Massachusetts and not otherwise, they would afford to plaintiffs in error a stronger argument.

It is clear that if Mr. Frick had made a bequest of tangibles in New York, which bequest was absolutely void by Pennsylvania law, the beneficiary could not have taken the property, even though such a bequest had not been prohibited by the laws of New York.

In some future case, this Court may have to consider the situation where a gift valid by the domiciliary law is, for reasons of local policy or otherwise, made absolutely void by affirmative legislation of the state of the situs. But that is not this case. Plaintiffs in error direct attention to the fact that the testator bequeathed to charity a larger portion of his property than is permitted, as against the widow and children, by New York statutes, and that the charitable gift of New York personal property took effect only because the widow and children "ratified" it. The fact that it did take effect, though as a result of such ratification, is sufficient proof that it was not void, but only voidable at suit of the widow and children, the statute being for their individual protection rather than an expression of a local policy against giving effect to such charitable gifts. Notwithstanding the ratification, the particular charity took by virtue of the words of gift contained in the will. The transfer in question, valid by Pennsylvania law, actually has been effected, notwithstanding the New York statutes.

Even if the charitable bequest had been absolutely void by the laws of New York, transfer of the property comprehended in it would not have escaped taxation by Pennsylvania, for void gifts either fall into residue or create an intestacy, and in either event the New York courts would have looked to the laws of Pennsylvania to ascertain the persons entitled. The law of the domicile would still have been "needed to establish the inheritance".

Plaintiffs in error have cited several cases wherein this Court has held to be invalid state statutes imposing capital stock and franchise taxes on domestic corporations when property having a situs outside the taxing state was included in the property taxed. Those were cases of taxes on property, hence have no application here, because the inheritance transfer tax of Pennsylvania is not a tax on property. In *Union Refrigerator Transit Company vs. Kentucky*, 199 U. S. 194, 211, one of the cases cited by plaintiffs in error, the Court expressly pointed out that inheritance and succession taxes "are controlled by different considerations."

Plaintiffs in error cite also *Looney vs. Crane Company*, 245 U. S. 178, and *Wallace vs. Hines*, 253 U. S. 66, wherein the taxes considered were corporation excise taxes, and the court held the statutes imposing them to be invalid because property outside the taxing state was included in measuring the amount of the excise. In those cases, however, the complaining corporations were foreign corporations, not created by the taxing state and having their domicile elsewhere. We have not succeeded in finding a decision where this Court has applied the same rule in the case of a corporation domiciled in the taxing state, but even such a decision would not be especially relevant to this argument, because no state adopts as its law of foreign corporations the laws of the several states by which the numerous foreign corporations operating within its boundaries were created. The corporation laws of foreign states are neither incorporated by reference nor given extra-territorial effect. Cases involving corporation excise taxes are not analogous to cases involving transfer inheritance taxes, since in the former the principles of comity and the traditions of our law applicable to the latter do not apply.

Plaintiffs in error cite the case of *Colorado vs. Harbeck*, 232 N. Y. 71, for the proposition that the transfer of tangible personalty situated in New York is not subject to inheritance taxes of another state, even though the decedent was domiciled in such other state. The case is not authority for that proposition. The court did not determine or undertake to determine the validity of the tax imposed by the foreign state, but merely held that the tax, whether valid or invalid, could not be recovered in a suit brought in New York. The ground of decision was the familiar principle that a tax is not a debt, and therefore cannot be recovered outside the boundaries of the jurisdiction imposing it. If personal service on the defendant had been obtained within the boundaries of the taxing state and judgment entered there, we have no doubt that the Court of Appeals of New York would have allowed recovery in an action brought upon the judgment.

Plaintiffs in error give particular attention to refuting the proposition that the domiciliary state may make the transfer of property within its borders conditional on the payment of inheritance taxes upon all the property of decedent wherever situated. That proposition has its limitations. We did not advance it in the court below, and we do not rely upon it here.

The argument of plaintiffs in error comes down to the novel proposition that in this class of cases the line should be drawn between tangible property, whether real or personal, on the one hand, and intangible property on the other, and not between real property and personal property. The proposition may or may not be sound when taxes on specific property are involved. But

it is clearly unsound when applied to transfer inheritance taxes. Whether a decedent's property be transferred by will or intestate succession, the real estate passes in accordance with the law of the situs—what the domiciliary law may provide is immaterial. But if the property be personalty, then whether it be tangible or intangible, pictures or stocks, the persons entitled must be determined by reference to the provisions of the domiciliary law. As a matter of history and practice the line is drawn between real estate and personal property. As was observed in *New York Trust Company vs. Eisner*, 256 U. S. 345, 349, "Upon this point a page of history is worth a volume of logic."

If the case of *State Tax on Foreign Held Bonds*, 15 Wall. 300, be read together with *Bullen vs. Wisconsin*, 240 U. S. 625, the true principle appears, namely, that while foreign personalty cannot itself be taxed, nevertheless an inheritance tax upon the transfer of personalty kept outside the state and owned by a resident decedent is wholly valid.

II.

INHERITANCE TAXES PAID TO PENNSYLVANIA, TO OTHER STATES, AND TO THE UNITED STATES, ARE NOT DEDUCTIBLE.

Prior to the present Act, the Pennsylvania statute providing for taxation of inheritances was the Act of May 6, 1887, P. L. 79, which prescribed that the measure of the tax should be the "clear value" of the estate. In *Otto's Estate*, 257 Pa. 155, the Supreme Court of Pennsylvania held that inheritance taxes paid by the estate of a Pennsylvania decedent to states other than Pennsylvania should be deducted in determining the amount upon which the Pennsylvania tax should be computed. The ground of decision was that until such deduction should be made, the measure of the tax, namely, the "clear value" of the estate, could not be arrived at. In *Knight's Estate*, 261 Pa. 537, the Supreme Court of Pennsylvania held that the Federal estate tax, also, should be deducted, and again for the reason that the Legislature had *intended* such deduction.

Article I, Section 2, of the present Act (Act of June 20, 1919, P. L. 521) makes the "clear value" of the estate still the measure of the tax, but goes farther, and in the following language defines "clear value":

"In ascertaining the clear value of such estates, the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates, and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estates to the Government of the United States or to any other State or Territory."

The intent of the Legislature that foreign state and Federal taxes shall not be deducted has thus been made plain, and the *ratio decidendi* of *Otto's Estate* and *Knight's Estate* has disappeared. Accordingly, the Supreme Court of Pennsylvania, in *Kirkpatrick's Estate*, 275 Pa. 271, and in the case at bar, has held that such taxes are not deductible.

Plaintiffs in error contend, however, that insofar as the statute provides that taxes paid to foreign states and to the United States shall not be deducted, and insofar as it does not provide that taxes paid to the State of Pennsylvania shall be deducted, it is in conflict with provisions of the Constitution of the United States.

The argument made for deduction of the taxes imposed by foreign states is that the states where the property, if tangible, is situated, or, if the property is intangible, the states where bonds or stock transfer books are kept, or where one owing money to the estate resides, impose taxes upon the transfer of the property thus under their control, and impose such taxes before the domiciliary executors may get possession of the property, wherefore such taxes are "paramount" and must be deducted before computation of the Pennsylvania tax; otherwise, the Pennsylvania tax is a "tax on taxes", for the property taxable by foreign states is diminished by the amount of taxes paid to those states.

Illustrating that argument, counsel for the executors state in their brief that before the States of Kansas and West Virginia would permit stocks of Kansas and West Virginia corporations, owned by the estate, to be transferred to the executors on the books of the issuing corporations, those States required payment of large

sums of money as inheritance taxes, by the amount of which the value of the stocks "for administration purposes in Pennsylvania" was reduced.

But the stocks were transferred to *somebody* at the moment of the testator's death; if that were not so, they would have been for a considerable period without an owner. At the moment of transfer the stocks had a definite market value, which was not increased or diminished by the expense the executors might be under in selling them to a third person or in reducing them to their personal possession afterwards. Pennsylvania was not required to adopt as the measure of its tax the value of the stocks to the executors, or their "value for administration purposes in Pennsylvania", but very properly adopted market value at the date of the testator's death—when his interest ceased.

As was pointed out by this Court in several cases above cited, the transfer of title to stocks of foreign corporations owned by this estate could not be effected without invoking the provisions of Pennsylvania law. In *Blackstone vs. Miller*, 188 U. S. 189, 207, Mr. Justice Holmes said that both the law of the state having physical control of a debtor and the law of the decedent's domicile must be invoked to effect the transfer of a debt. But he did not suggest that the one or the other law was "paramount". If superiority of the state having control of the debtor or issuing corporation, over the state of the domicile of the decedent, does in fact exist, which we decline to admit, it is a superiority of *power* and not of *right*. That point, we think, was overlooked in *Matter of the Estate of Henry Miller*, 184 Calif. 674, cited by plaintiffs in error.

The fallacy of the argument that the value of foreign property is reduced by the amount of inheritance



taxes paid to foreign states lies in failing to observe the fundamental principle of inheritance taxation, namely, *that the tax is not upon or out of the property, but upon the privilege of transfer*. The domiciliary state grants one privilege, and the state where the stock transfer books are kept grants or allows another, and each state taxes, at a rate considered fair by its legislature, the privilege conferred by its laws. But neither taxes the property transferred or takes any part of that property. As well might it be argued that an inheritance tax computed upon the value of an estate including United States bonds is a taking or extinguishing of part of the value of the bonds. That argument cannot be made successfully since the decision of *Plummer vs. Coler*, 178 U. S. 115.

The argument that the Federal estate tax must be deducted is based principally upon two propositions: first, Pennsylvania's refusal to deduct is an interference with the "paramount" taxing power of the United States; second, it is in violation of the due process clause of the XIVth Amendment.

In *New York Trust Company vs. Eisner*, 256 U. S. 345, the validity of the Federal estate tax was drawn in question on the ground that it was a direct tax and therefore invalid because not apportioned, and on the further ground that if it was an indirect or transfer tax, it was cast upon the transfer while the latter was being effectuated by the state, and was consequently an interference by the Federal government with state processes. Those questioning its validity laid special emphasis on the fact that the privilege of transfer was created by state laws exclusively, which was not doubted. This Court held both grounds of objection insufficient and

sustained the tax, on authority of *Knowlton vs. Moore*, 178 U. S. 41.

We refer to *New York Trust Company vs. Eisner* because it applies, *a fortiori*, to the case at bar. If a tax by the Federal government on a privilege created exclusively by a state, such tax accruing at the instant of transfer, is not an unconstitutional interference with state processes, how can a similar tax imposed by the jurisdiction which itself creates the privilege be an unconstitutional interference with Federal processes?

On careful analysis it appears that if either the state or the Federal government be "paramount" in this field, it is the state and not the Federal government. The privilege of transfer is granted, affirmatively and exclusively, by state legislation. Take that legislation away, and the privilege now taxed by Congress does not exist. If the state does not take the privilege away entirely, but limits it, as, for example, by conditioning it upon payment of a tax to the state, the privilege taxed by Congress is the privilege as so limited and so conditioned. The *condition inheres in the privilege*, and if the condition is not performed, there is no privilege for Congress to tax. Thus the state comes first. *Hyde vs. Woods*, 94 U. S. 523, is an illustration of the principle we have in mind.

The difference between Pennsylvania's refusal to deduct the amount of the Federal tax and any attempt to impose a state tax on a Federal instrumentality is of course obvious. Since the state tax is not upon property, no moneys paid or payable to the Federal government are in fact taxed. There can be no constitutional objection to including such moneys in the *measure of the tax*, since, under this Court's decision in *Plummer*

*vs. Coler*, 178 U. S. 115, even United States bonds may be included in that measure.

Inheritance taxation is not an instance of concurrent state and Federal jurisdiction under the Constitution. In cases of concurrent jurisdiction, if the Federal government acts, of course its legislation is "paramount". Here is merely a case where both state and Federal government impose privilege taxes, each adopting substantially the same subject and the same measure.

If plaintiffs in error are correct in their argument that Pennsylvania has interfered with the "paramount" taxing power of the United States, it is not enough that she deduct the amount of the Federal tax. The state should withdraw entirely from the field of inheritance taxation, for if the Federal taxing power in that field is "paramount", it is difficult to see why it is not also exclusive so long as Congress sees fit to tax the transfer of estates—as in the case of bankruptcy. That result would be anomalous, to say the least, since the subject of the tax is created by the state exclusively. And if, because Congress has taxed the transfer of estates, the states may not do so, then, by the same token, they may not impose stamp taxes on transfers of stock *inter vivos* or excises on the privilege of doing business in the corporate form. The argument of plaintiffs in error leads, curiously enough, to no great increase of Federal power, but does lead to an incalculable decrease of state power.

So long ago as 1824, in *Gibbons vs. Ogden*, 9 Wheaton, 1, 198, Mr. Chief Justice Marshall pointed out that neither Federal nor state taxing power is "paramount" in respect to the other. He said:

“The power of taxation is indispensable to their (the states’) existence, and is a power which, in its own nature, is capable of residing in, and being exercised by different authorities at the same time. \* \* \* Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. That does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. In imposing taxes for state purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states. When, then, each government exercises the power of taxation, neither is exercising the power of the other.”

Plaintiffs in error do not carry their argument of Federal superiority to the point of asserting that the Federal power is exclusive, but go only part way. They say that the Pennsylvania tax as now computed interferes with the “paramount” taxing power of the United States, and then point out that such interference will be eliminated if the Federal tax is deducted before computation of the state tax. By inference, therefore, they admit that the state and Federal taxing powers may operate upon the one subject. Having made that admission—and granting, for the sake of argument, that the Federal government is “paramount”—they are under the necessity of showing that collection of the state tax *actually* interferes with collection of the Federal tax. They must show, for example, that the estate is not large enough to pay in full the taxes of both jurisdictions. That situation does not exist in this case—the point made by plaintiffs in error is merely academic.

The argument that Pennsylvania's refusal to deduct the Federal tax violates the due process clause of the XIVth Amendment reduces itself to the proposition that before the state tax accrues, the estate has already been reduced by the amount of the Federal tax. This Court answered that argument very fully in *New York Trust Company vs. Eisner*, 256 U. S. 345, by holding specifically that the Federal tax is not a direct tax on the property comprised in the estate, but only an excise on the transfer. Since it is not on the property, the estate transferred is not reduced at all, and the state tax is not a "tax on taxes".

It is said to be unfair and unjust that the residuary legatees must pay a tax measured by the entire residue, when the will directs that all inheritance taxes be paid out of that fund, which is accordingly reduced. If the result be unjust, the fault lies with the testator, and not with the law. The testator has himself imposed upon the residuary legatees the burden of paying taxes on the gifts to themselves and upon all other gifts made by the will. He may place the incidence of inheritance taxes where he wishes as between the beneficiaries, but he is incapable of removing any part of his estate from the operation of the law.

*Matter of Swift*, 137 N. Y. 77;

*Matter of Penfold*, 149 N. Y. Supp. 918 (Affirmed 216 N. Y. 171);

*In re Week's Estate*, 169 Wis. 316.

So far as we are aware, in this case it is argued for the first time that the tax of the taxing state itself must be deducted. In *Matter of Gihon*, 169 N. Y. 443, the

Court of Appeals of New York, apparently considering that such an argument would be absurd, said:

"It is said to be unjust to tax the recipient of a legacy for \$10,000 on its full amount, as \$500 has been exacted from him by the Federal Government. This argument is equally applicable to our own taxation."

This question of deducting the taxes of other jurisdictions is not a new one. It has been raised in many state courts, and always has been dealt with as a problem of construing the particular statute. When deduction has been allowed, it has been on the ground that the legislature *intended* it to be allowed, and when not allowed, it has been because the statute under consideration, as construed by the court, did not provide for such allowance. In *Matter of Gihon*, 169 N. Y. 443, the Court of Appeals of New York held that the Federal legacy tax imposed by Act of Congress in 1898 (30 Stat. at L. c. 448, Sections 29 and 30) was not deductible prior to computation of the New York tax. In *Succession of Gheens*, 148 La. 1017, *Week's Estate*, 169 Wis. 316, *Bierstadt Estate*, 178 App. Div. (N. Y.) 836, *Penfold's Estate*, 216 N. Y. 171, *Matter of Sherman*, 179 App. Div. 497 (Affirmed 222 N. Y. 540), *Sanford's Estate*, 188 Iowa 833, and *Hazard vs. Bliss*, 43 R. I. 431, the several state statutes were construed as not providing for deduction of inheritance taxes paid to other jurisdictions, and accordingly such taxes were held not deductible. Five state courts of last resort, therefore, besides the Supreme Court of Pennsylvania in the case at bar and in *Kirkpatrick's Estate*, 275 Pa. 271, observed no invalidity of statutes providing that deduction should not be allowed. In *Hooper vs. Shaw*, 176 Mass. 190, *State vs. Probate Court*, 97 Minn. 532, *People vs. Pasfield*, 284 Ill. 450, *People vs. Northern Trust Company*, 289 Ill.

475, *Knight's Estate*, 261 Pa. 537, *Otto's Estate*, 257 Pa. 155, *Roebling's Estate*, 89 N. J. Eq. 163, *State vs. First Calumet Trust & Savings Bank*, 71 Ind. Appellate 467, *People vs. Bemis*, 68 Col. 48, *Corbin vs. Townshend*, 92 Conn. 501, and *Old Colony Trust Company vs. Burrell*, 238 Mass. 544, the courts were of opinion that the statutes under consideration, correctly construed, provided for deduction of the Federal inheritance tax, or the inheritance taxes of other states, or both, and accordingly held such taxes deductible. But except in *Kirkpatrick's Estate* and in the case at bar, the question has always been considered as one of statutory construction, and not of constitutional power.

In *New York Trust Company vs. Eisner*, 256 U. S. 345, this Court held that New York legacy taxes were not deductible before computation of the Federal tax, and Section 403 (a) (1) of the Revenue Act of 1921 expressly provides that state taxes shall not be so deducted.

The majority opinion of the Supreme Court of Rhode Island in *Hazard vs. Bliss*, *supra*, contains the following language:

"In *Gibbons vs. Ogden*, 9 Wheat. 1, page 197, 6 L. Ed. 23, Chief Justice Marshall comments upon the authority of the national government and of a state government to each exercise the power of taxation which is indispensable to their existence, and says that the grant of power to Congress to levy and collect a tax has never been understood to interfere with the exercise of the same power by the state. In the matter before us the nation and the state has each sought to tax the right to transfer. By entering the same field of taxation, equally open to each, neither sovereign has diminished the subject of the tax, nor has it reduced the revenues of

the other. By the use of the same measure neither has impaired that measure. When the federal government taxed the right to transfer the net estate, it did not reduce the net estate nor that portion which our law permitted the testator to transfer to the residuary legatee; although by reason of the collection of the Federal tax the amount which the residuary legatee received was diminished."

Respectfully submitted,

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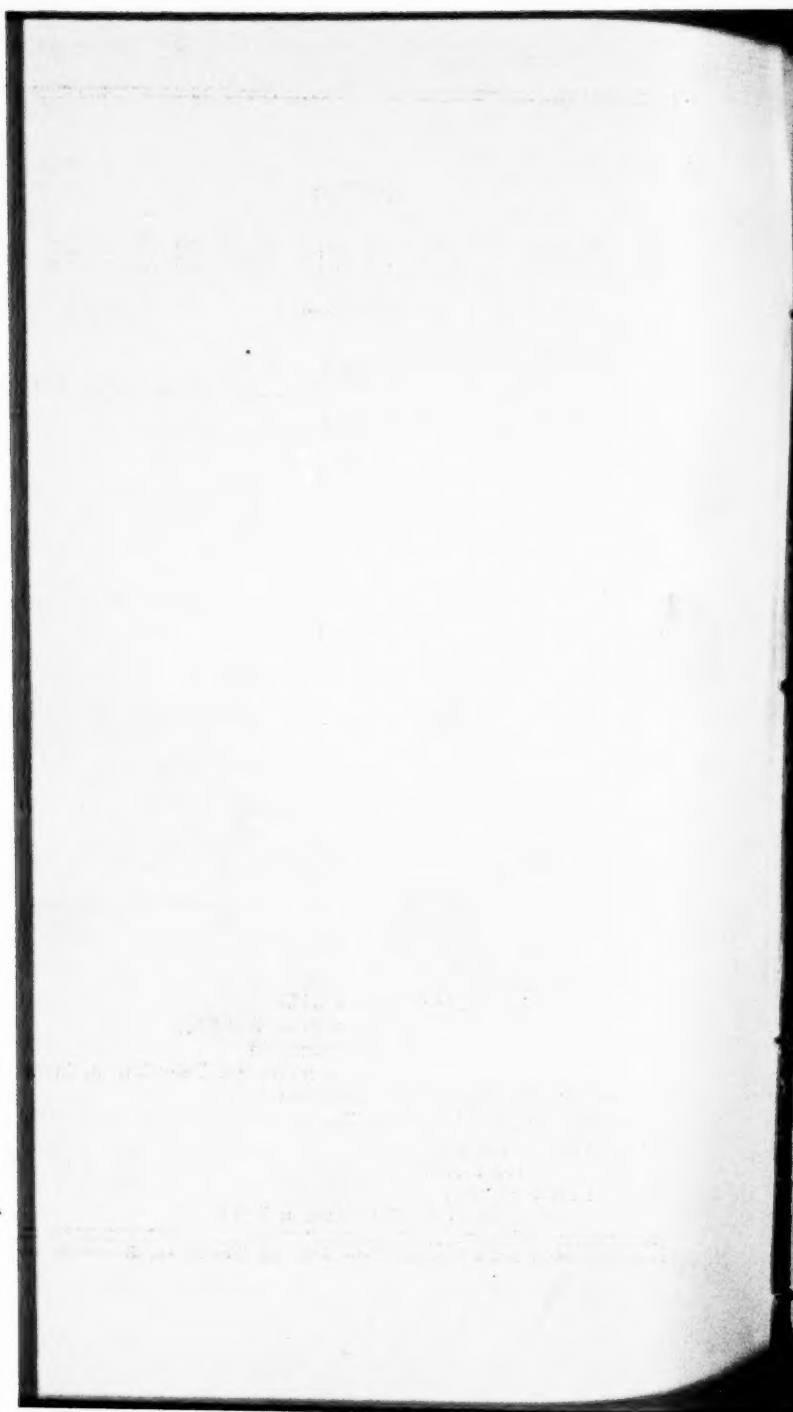
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IN THE

# Supreme Court of the United States

HELEN C. FRICK,  
Plaintiff in Error,  
v.  
COMMONWEALTH OF  
PENNSYLVANIA.

122

No. ~~442~~ October  
Term, 1923.

HELEN C. FRICK,  
Plaintiff in Error,  
v.  
COMMONWEALTH OF  
PENNSYLVANIA.

123

No. ~~448~~ October  
Term, 1923.

ADELAIDE H. C. FRICK,  
et al., executors,  
Plaintiffs in Error,  
v.  
COMMONWEALTH OF  
PENNSYLVANIA.

124

No. ~~444~~ October  
Term, 1923

ADELAIDE H. C. FRICK,  
et al., executors,  
Plaintiffs in Error,  
v.  
COMMONWEALTH OF  
PENNSYLVANIA.

125

No. ~~445~~ October  
Term, 1923

## Brief on Behalf of the State of New York and of Its Attorney General.

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✓  
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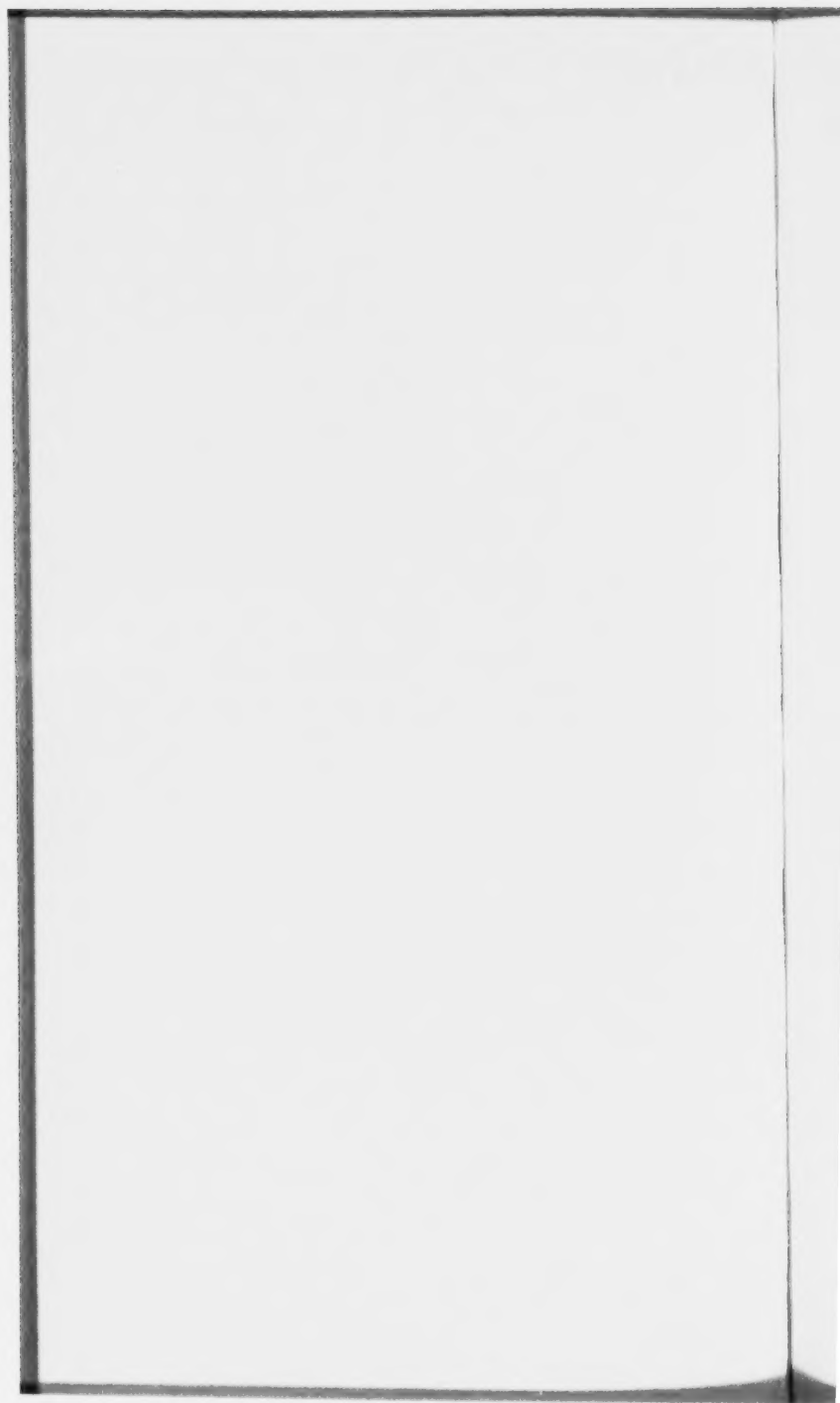


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No. 443 October  
Term, 1923.

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Executors,  
Plaintiffs in Error,  
*against*  
COMMONWEALTH OF PENNSYLVANIA.

No. 444 October  
Term, 1923.

ADELAIDE H. C. FRICK *et al.*,  
Executors,  
Plaintiffs in Error,  
*against*  
COMMONWEALTH OF PENNSYLVANIA.

No. 445 October  
Term, 1923.

BRIEF SUBMITTED ON BEHALF OF THE  
STATE OF NEW YORK

STATEMENT

Through the courtesy of counsel for the respective parties and by permission of this court, the State of New York through its attorney-general

and the attorney-general of the State of New York in his official capacity, file this brief *amici curiae* in connection with the assignments of error wherein it is claimed that the Pennsylvania transfer tax should be imposed on the estimated tax value of the estate only after the deduction therefrom of the amounts paid to the United States as an estate tax and to other states as taxes on the transfer of shares of stock.

The State of New York is interested in these questions for the reason that a determination by this court that the federal tax and taxes of other states must be deducted in computing the Pennsylvania tax, would probably be controlling in the application of the New York transfer tax act and require the deduction of such taxes in computing the New York tax. This would result in a very material loss of revenue to New York and require the refunding of enormous sums of money representing taxes heretofore paid to New York.

The question of the deduction of taxes paid to other states will be covered by the argument presented in relation to the deductibility of the federal tax, it being believed that the position taken in Point I is conclusive in respect to the former.



## ARGUMENT

## POINT I

EACH SOVEREIGN STATE HAS THE RIGHT TO DETERMINE FOR ITSELF IN WHAT MANNER THE TAX UPON TRANSFERS SHALL BE MEASURED, AND THE ENACTMENT BY THE LEGISLATURE OF PENNSYLVANIA REFUSING TO ALLOW THE DEDUCTION OF THE FEDERAL ESTATE TAX IN NO WAY INFRINGES UPON THE CONSTITUTION OF THE UNITED STATES.

In *New York Trust Co. v. Eisner*, 256 U. S. 345, it was decided that the New York State transfer tax and similar taxes of other states are not to be deducted in arriving at the base for the federal estate tax, but it was said (p. 350):

“What amount New York may take as the basis of taxation and questions of priority between the United States and the State are not open in this case.”

On this appeal the questions so reserved are to be considered. The New York statute and the Pennsylvania statute are alike in effect, the difference being that the non-deductibility of the federal tax under the New York act is established by construction of the courts, whereas the Pennsylvania act establishes this feature by express language.

That the transmission of property from the dead to the living presents a universal subject of taxation, upon which may be rested the authority of both congress and the legislatures

of the states to impose transfer taxes, is well settled. These taxes are in the nature of excises or privilege taxes, not taxes upon property, and may therefore be measured in any reasonable manner. In *Bell's Gap R. R. Co. v. Pennsylvania*, 134 U. S. 232, this principle is set forth in the following language:

“ The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, *and those of like character, so long as they proceed within reasonable limits and general usage,* are within the discretion of the State Legislature, or the people of the State in framing their Constitution.” (Italics ours.)

In *Flint v. Stone Tracy Co.*, 220 U. S. 107, 167, this court say:

“ We must not forget that the *right to select the measure* and objects of taxation devolves upon the Congress and not upon the courts, and such selections are valid unless constitutional limitations are overstepped.” (Italics ours.)

“ Limitations are to be found in the words and intendment of the Constitution and the fundamental principles of government embodied therein. The taxing power, both direct and through an inheritance tax, is very broad and submits to few restrictions. Such laws need not be submitted to courts for their approval and can only meet with disapproval when some fundamental principle has been violated.” *Matter of Watson*, 226 N. Y. 384, 393.

It is submitted that a tax upon a privilege may be measured in many ways. No doubt a tax of a fixed amount upon all transfers, as, for example, a tax of \$50 on every transfer where the value of the property exceeded \$500, would be sustained, even though the effect would be to tax a transfer of \$501 exactly the same as a transfer of millions of dollars. A transfer tax may be measured by the gross estate, it may be measured by the net estate or it may be measured by the amounts passing to beneficiaries. A state, if it sees fit, may provide that, for the purpose of establishing the base by which its transfer tax is to be measured, the amount paid to the United States as a transfer tax, shall be deducted from the value of the property passing, and it may with equal propriety provide that the base shall be the value of the property without deduction of the federal tax.

Perhaps no better illustration of the discretion vested in legislative authority to measure privilege taxes by different standards and in different ways can be found than the action of congress in imposing the Spanish war tax on the amounts passing to individual beneficiaries with an

exemption to each and graded by the amounts received by individual beneficiaries, and its action in measuring the present tax by the net estate with only one exemption and graded according to the value of the net estate. The constitutionality of the former tax was sustained in *Knowlton v. Moore*, 178 U. S. 41, and of the latter in *New York Trust Co. v. Eisner*, *supra*.

Another illustration of the latitude of the legislature in establishing the basis for the measurement of transfer taxes is found in the decision of the Court of Appeals of New York in *Matter of White*, 208 N. Y. 64. The New York transfer tax act provides for the taxation of life estates upon the value determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies. The life tenant died before the transfer tax was fixed. It was held that the foregoing statutory rule must apply, even though it resulted in the imposition of a greater tax than if the value of the life estate had been measured according to the actual duration of life of the life tenant.

But the right of a state to impose transfer taxes is not limited to the universal subject of taxation. It rests in part upon the power to regulate succession, which is vested solely in the states. State authority to tax transfers is therefore greater and subject to fewer restrictions than is the authority of the federal government.

In sustaining the right of the State of Louisiana to impose death duties in *Mager v. Grima*, 8

How. 490, 493, Mr. Chief Justice Taney, speaking for this court, said:

“\* \* \* The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and terms upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. \* \* \* If a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.”

In *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 288, it was said:

“The right to take property by devise or descent is a creature of the law, and not a natural right — a privilege, and, therefore, the authority which confers it may impose conditions upon it. From these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation.”

There are many decisions holding that the power of states to levy transfer taxes is derived in part from the right to regulate the succession to property, from a few of which excerpts are here given:

“\* \* \* the so called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a

declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the state has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee."

*United States v. Perkins*, 163 U. S. 625, 628.

In the able dissenting opinion of Mr. Justice Holmes, in *Chanler v. Kelsey*, 205 U. S. 466, 479, he says:

"A state succession tax stands on different grounds from a similar tax by the United States or a general state tax upon transfers. It is more unlimited in its possible extent, if not altogether unlimited, and therefore it is necessary that the boundaries of the power to levy such taxes should be accurately understood and defined.

"I always have believed that a state inheritance tax was an exercise of the power of regulating the devolution of property by inheritance or will upon the death of the owner, — a power which belongs to the states; and I have been fortified in my belief by the utterances of this court from the time of Chief Justice Taney to the present day."

"The beneficiary has no claim to the property of an ancestor except as given by law, and, if the state has a right to impose a tax at all upon the passing of property, the transferee takes only what is left after the tax is paid." *Matter of Watson, supra*.

“The privilege of making a will is not a natural or inherent right, but one which the state can grant or withhold in its discretion. If granted, it may be upon such conditions and with such limitations as the legislature sees fit to create. The payment of a sum in gross, or of an amount measured by the value of the property affected, may be exacted, or the right may be limited to one or more kinds of property and withdrawn as to all others.” *Matter of Delano*, 176 N. Y. 486, 491.

“Neither the right to make a testamentary disposition or the right to inherit property is an inherent right. It is not guaranteed by the fundamental law. It depends entirely upon the consent of the legislature. It can withhold or grant the right, and if it grants it it may make its exercise and its extent subject to such burdens and requirements as it pleases.” *Matter of Penfold*, 216 N. Y. 163, 166-7.

Essentially, a state transfer tax, being a privilege tax, is not dissimilar to a state tax upon the franchises of corporations, which is also a privilege tax, and the same principles which apply to the measurement of a franchise tax on corporations should apply to a tax on transfers.

In *Home Insurance Co. v. New York*, 134 U. S. 594, 600, involving a state franchise tax on corporations, Mr. Justice Field, writing the opinion of this court, said:

“The granting of such right or privilege (to be a corporation\*) rests entirely in the discretion of the state, and, of course, when granted, may be accompanied with such conditions as its legislature may judge most

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\* The words within the parenthesis are ours.

befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the state each year, or month, or a specific portion of its gross receipts, or of the profits of its business, *or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows.*" (Italics ours.)

As a matter of fact the New York act imposing a franchise tax on business corporations (Article 9-a, New York State Tax Law) expressly provides (section 208, subdivision 3) that:

"The term 'entire net income' means the total net income, \* \* \* before any deductions have been made *for taxes paid or to be paid to the government of the United States* on either profits or net income or for any losses sustained by the corporation in other fiscal or calendar years whether deducted by the government of the United States or not." (Italics ours.)

A corporation's actual net income cannot be ascertained until all taxes are paid, and unless the contention herein, that measurement of privilege taxes may be made in any reasonable way, is correct, it would seem to follow that a tax based upon net income which does not permit the deduction of taxes paid to the United States, is every



bit as objectionable as a transfer tax measured by the value of property without the deduction of taxes paid to the United States. The provision of the New York statute above quoted was sustained in *People ex rel. Barcalo Manufacturing Co. v. Knapp*, 227 N. Y. 64.

That the foregoing quotation from *Home Insurance Co. v. New York* is applicable to transfer taxes is indicated by Mr. Justice Shiras in *Plummer v. Coler*, 178 U. S. 115, 137, who states:

“ \* \* \* we may regard it as established that the relation of the individual citizen and resident to the state is such that his right, as the owner of property, to direct its descent by will, or by permitting its descent to be regulated by the statute, and his right, as legatee, devisee or heir, to receive the property of his testator or ancestor, are rights derived from and regulated by the state, and we are unable to perceive any sound distinction that can be drawn between the power of the state in imposing taxes upon franchises of corporations, composed of individual persons, and in imposing taxes upon the right or privilege of individuals to avail themselves of the right to grant and to receive property under the statutes regulating the descent of the property of decedents.”

In the *Delaware R. R. Tax Case*, 18 Wall. 206, 231, on the question of the jurisdiction of states to tax, this court say:

“ The state may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation,

however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the state; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction."

Quoting again from *Home Insurance Co. v. New York*, *supra*, at pages 600-601 it was said:

"It is true, as said by this court in *California v. Pacific Railroad Co.*, 127 U. S. 1, 41, that the taxation of a corporate franchise has no limitation but the discretion of the taxing power, and its value is not measured like that of property, but may be fixed at any sum that the legislature may choose; it may be arbitrarily laid, without any valuation put upon the franchise. If any hardship or oppression is created by the amount exacted, the remedy must be sought by appeal to the legislature of the state; it cannot be furnished by the federal tribunals."

Another example of the discretion allowed the states in determining how privilege taxes shall be measured is found in the laws of several of the states which tax the transfer of shares of corporate stock. This tax in New York is two cents on each one hundred dollars of face value or fraction thereof. That the face value of corporate stock is no criterion of its actual value is a matter of common knowledge. Stock having a face value of \$100 may be actually worth \$500, or it may be actually worth nothing, but in either event the transfer of the stock is taxed at two cents per share. It may be noted that the federal tax on

the transfer of stock is computed by substantially the same method as is employed by the State of New York. No one appears to have questioned the right to thus measure the tax on the transfer of corporate stock, but if it should be held an unreasonable exercise of a state's power to refuse a deduction of the federal tax in fixing the base for the measurement of state transfer taxes on the transmission of property, would it not seem that such a decision would clearly invalidate the stock transfer taxes?

As to the supremacy of the state and the finality of its action in fixing the basis for the measurement of privilege taxes, the attention of this court is invited to the decision in *Estate of Week*, 169 Wis. 316.

To any claim that the federal estate tax should be deducted in fixing the base for state transfer taxes on the ground that the federal tax is imposed first and to tax it would be to tax a tax, the following language of this court in *Flint v. Stone Tracy Co.*, *supra*, at page 162, is peculiarly applicable:

“But this argument confuses the measure of the tax upon the privilege, with direct taxation of the estate or thing taxed.”

In *Knowlton v. Moore*, *supra*, at page 77, this court say:

“We are bound to give heed to the rule that where a particular construction of the Statute will occasion great inconvenience, or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the Statute.”

Let us now examine as to whether or not the construction contended for by plaintiffs in error would result in inconvenience. It seems a reasonable conclusion that the legislature of a state in providing for the raising of revenue by a tax upon transfers intends to produce an amount which, although it may vary somewhat, will nevertheless be approximately the same over a period of years. Such a revenue measure is one of the component parts of a state's system of taxation whereby will be raised and made available an amount sufficient to meet the state's expenditures. Should it be required that the federal estate tax be deducted from the base upon which the state tax is to be computed, it is manifest that the amount which the state will receive must depend to a considerable extent upon the amount of taxes imposed by the United States. The remedy of the state in order to maintain its revenues intact would be to increase the rate from time to time as the impositions of the federal government are increased. The present federal tax was enacted by the revenue act of September 8, 1916. On March 3, 1917, the rates were greatly increased. Again in October, 1917, the rates were increased and again on February 24, 1919. In order to keep step with the federal government and not suffer losses of revenue, it would have been incumbent upon the state to increase its rates each time the federal tax was increased. Not only in this respect would the greatest possible inconvenience be experienced, but a decision at this time requiring the deduction of the federal tax would necessitate the refunding by the State of Pennsylvania, the State of New York and other states of vast sums of

money, which would have to be raised by increased taxation or a bond issue. Is it not much more convenient and reasonable that the states fix the bases of their transfer taxes without deduction of the federal taxes, thereby preventing the constant fluctuation of rates and avoiding the necessity of refunds?

Extreme care should be exercised in approaching the question under consideration, for an interference in one respect with the right of states to determine the measure of transfer taxes would, no doubt, be productive of a multiplicity of suits in which equitable considerations would be presented and claims made of the hardships produced. The door once opened, it is impossible to foretell to what extent the doctrine that states have not the right to measure privilege taxes as they see fit (but always within reasonable limitations) might be carried. It must be borne in mind that

“ \* \* \* there is no general supervision on the part of the Nation over State taxation, and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects and methods.”

*Shaffer v. Carter*, 252 U. S. 37.

As has been heretofore suggested, the power of a state to tax transfers for a fixed amount seems undoubted and were this done such amount could not be varied because of the imposition of a federal tax. Yet a tax at a fixed amount would be much more arbitrary and more productive of inequity than the tax which is here assaulted.

To summarize the argument on this point, it is contended that transfer taxes are privilege taxes

and as such, when considered as imposed upon the universal subject of taxation, *i. e.*, the transmission from the dead to the living, may be measured in any reasonable way. It is also contended that the state's right to tax is not restricted to the universal subject of taxation but rests in part upon the power of regulation of succession, and if a state may abolish succession entirely, it may tax it to such extent as it deems necessary for the public welfare and may compute the tax in such manner as it may prescribe.

Surely the refusal of a state to deduct the federal tax in fixing the base for the measurement of transfer taxes cannot be regarded as being more arbitrary or unreasonable than a tax measured by 80% of the producing capacity of a distillery, regardless of whether or not this percentage is actually produced, and by the entire amount produced if in excess of 80%. Still a statute of the United States imposing such a tax, measured by distillery capacity, was upheld by this court in *United States v. Singer*, 15 Wall. 111.

The attention of the court is invited to the decisions of the New York courts, holding that the present federal tax is not deductible.

*Matter of Bierstadt*, 178 App. Div. 836; *Matter of Sherman*, 179 App. Div. 497, *aff'd* 222 N. Y. 540; *Matter of Carnegie*, 203 App. Div. 91, *aff'd* 236 N. Y. Memo. (See Advance Sheet No. 1175.)

## POINT II.

THE UNITED STATES AND THE STATE BOTH TAX THE SAME SUBJECT, VIZ: "THE TRANSFER," WHICH TAKES PLACE INSTANTANEOUSLY AT DEATH. BOTH TAXES TAKE EFFECT SIMULTANEOUSLY AND ARE, THEREFORE, CUMULATIVE, NEITHER TAKING PRECEDENCE OVER THE OTHER, AND NEITHER IS REQUIRED TO BE DEDUCTED IN COMPUTING THE OTHER.

The federal tax is imposed "upon the *transfer* of the net estate of every decedent dying after the passage of this Act." Sec. 401, Title IV, Revenue Act of 1918. (Italics ours.) The state tax is imposed "upon the *transfer* of any property \* \* \* When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth." Sec. 1, Art. 1 of Act approved June 20, 1919. (Italics ours.)

What is this *transfer* which is the subject of taxation? In *Bouvier's Law Dictionary, Rawle's Third Revision*, p. 3308, this definition of a *transfer* is given:

"The act by which the owner of a thing delivers it to another person, with the intent of passing the rights which he has in it to the latter."

See also *Matter of Gould*, 156 N. Y. 423, 428, where the Court of Appeals of New York say:

" \* \* \* the word 'transfer' in the statute is used advisedly and according to its ordinary legal signification, which is that

the owner of a thing delivers it to another person with the intent of passing the rights which he has in it to the latter."

This *transfer* takes effect instantaneously at death. No sooner does the breath leave the body than the property of the decedent passes and vests in his successors. There is no suspension of ownership for the minutest fraction of a second, and the transmission from the dead and receipt by the living are merged into this operation which we designate as the *transfer*. The transfer may be likened to the coming together of a person's hands, the transmission from the dead taking place when the right hand touches the left and the receipt by the living when the left hand touches the right. There is no difference whatsoever in point of time for the right hand touches the left at the same instant the left hand touches the right. So with the transfer, the transmission from the dead takes place at the same instant as the receipt by the living.

"The transfers take place necessarily at the moment of death, for the will on the one hand and the intestate laws on the other operate and speak from that date." *Gleason and Otis on Inheritance Taxation, Third Edition*, p. 28.

"Upon the intestate's death his estate passed *eo instanti* to the persons who, by virtue of the intestate law, were entitled thereto." *Matter of Ramsdill*, 190 N. Y. 492, 495.

"The tax (so-called) is the toll or impost appropriated to itself by the State for or in connection with the right of succession to property. It accrues, therefore, at the same time that the estate vests, that is upon the death of the decedent." *Matter of Penfold*, *supra*, p. 167.



“ The tax imposed by the statute is upon the interests transferred by will or under the intestate law of the state. *The devolution of the property and the right of the state have their origin at the same moment of time.* The ascertainment of the value of the taxable interest and the fixing of the tax necessarily takes place subsequent to the death. But the guide is the value at the time of the death, when the interests were acquired.” *Matter of Westurn*, 152 N. Y. 93. (Italics ours.)

“ Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.” *Knowlton v. Moore*, *supra*, p. 56.

Having, as we believe, established that both the federal and state taxes are upon the *transfer* and that this takes place instantaneously upon death, we are led to inquire by what method of reasoning it can be contended that either tax is imposed prior to the other or that either takes precedence over the other. As a matter of fact, there is and can be no difference in the incidence of the two taxes and they are therefore both concurrent and cumulative.

There seems to be no doubt of the right of sovereignties to impose concurrent taxes, and in

no sense does it appear that where there is a common or universal subject of taxation, the imposition of a tax thereon by a state is an interference with the power of congress to levy taxes.

“ Under our constitutional system both the National and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the Constitution established.” *Knowlton v. Moore, supra*, p. 60.

In a case involving the corporation franchise tax law of New York, it was said:

“ The United States and the State of New York in such matters are independent powers, neither of which need yield to the other. Each taxes, and so seizes, a part of the same income; but there is no more reason why the state must recognize the deductions of the United States before calculating its percentages than that the United States must recognize those of the state, which it surely need not, if it choose to ignore them.” *Gorham Manufacturing Co. v. Travis*, 274 Fed. 975, 981.

In the dissenting opinion in the Supreme Court of Pennsylvania (*Frick's Estate*, 277 Pa. 242), an attempt is made to show that the federal tax necessarily precedes the state tax and that the United States having the right to first collect its tax, the state can only tax what is left. An example is cited which supposes a federal tax of 60% of the estate and a state tax of an equal

amount. This, of course, is a supposititious case which in all probability never will arise, but even conceding that such a case might arise, it would not be a necessary conclusion that the state could take as the basis of its tax only what was left after the federal tax was taken out. If congress should by a proper apportionment impose a direct tax upon real estate, a situation would arise in which both the federal and state governments would tax the same thing on a valuation basis. If the value of a given piece of real estate was \$10,000, upon which a federal tax of \$200 fell due on a given day, it does not seem likely that it would be contended that a state tax on the same real estate, falling due the same day, could be imposed on only the sum of \$9,800 because the United States had collected a tax of \$200. But the same situation might arise in respect to such a tax on real estate as is referred to in the dissenting opinion in relation to a tax on transfers; that is, both the federal and state governments might increase their respective rates of taxation to 60%. It is not necessary here to discuss, or for this court to decide, what might happen in the event that two sovereignties, each having concurrent jurisdiction to tax, should impose rates which in the aggregate would exceed the value of the property. If and when such an altogether unlikely event occurs, then will be time enough to decide what the rights of the respective parties are.

## POINT III.

THE STATUTE OF THE STATE OF PENNSYLVANIA IMPOSING THE TAX IN NO WAY CONTRAVENES, CONFLICTS WITH OR INFRINGES UPON ANY PROVISION OF THE CONSTITUTION OF THE UNITED STATES IN SO FAR AS THE QUESTIONS DISCUSSED IN THIS BRIEF ARE CONCERNED, AND IN RESPECT TO THOSE QUESTIONS, THE APPEAL MUST FAIL.

Respectfully submitted,

CARL SHERMAN,

Attorney General of the  
State of New York.

SETH T. COLE,  
of Counsel.





# SUPREME COURT OF THE UNITED STATES.

Nos. 122, 123, 124, 125.—OCTOBER TERM, 1924.

Helen C. Frick, Plaintiff in Error,  
122                      *vs.*  
Commonwealth of Pennsylvania.

Helen C. Frick, Plaintiff in Error,  
123                      *vs.*  
Commonwealth of Pennsylvania.

Adelaide H. C. Frick et al., Executors,  
                                Plaintiffs in Error,  
124                      *vs.*  
Commonwealth of Pennsylvania.

Adelaide H. C. Frick et al., Executors,  
                                Plaintiffs in Error,  
125                      *vs.*  
Commonwealth of Pennsylvania.

On Writs of Error to the  
Supreme Court of the  
Commonwealth of Penn-  
sylvania.

[June 1, 1925]

Mr. Justice VAN DEVANTER delivered the opinion of the Court.

These four cases involve the constitutional validity of particular features of a statute of Pennsylvania imposing a tax on the transfer of property by will or intestate laws. Act No. 258, Pa. Laws 1919, 521.

Henry C. Frick, domiciled in Pennsylvania, died testate December 2, 1919, leaving a large estate. By his will he disposed of the entire estate—giving about 53 per cent for charitable and public purposes and passing the rest to or for the use of individual beneficiaries. Besides real and personal property in Pennsylvania, the estate included tangible personalty having an actual situs in New York, tangible personalty having a like situs in Massachusetts, and various stocks in corporations of States other

than Pennsylvania. The greater part of the tangible personalty in New York,<sup>1</sup> having a value of \$13,132,391.00, was given to a corporation of that State for the purposes of a public art gallery, and the other part,<sup>2</sup> having a value of \$77,818.75, to decedent's widow. The tangible personalty in Massachusetts,<sup>3</sup> having a value of \$325,534.25, was also given to the widow. The will was probated in Pennsylvania, and letters testamentary were granted there. It was also proved in New York and Massachusetts, and ancillary letters were granted in those States. Under the laws of the United States the executors were required to pay to it, and did pay, an estate tax of \$6,338,898.68; and under the laws of Kansas, West Virginia and other States they were required to pay to such States, and did pay, large sums in taxes imposed as a prerequisite to an effective transfer from a non-resident deceased of stocks in corporations of those States.

The Pennsylvania statute provides that where a person domiciled in that State dies seized or possessed of property, real or personal, a tax shall be laid on the transfer of the property from him by will or intestate laws, whether the property be in that State or elsewhere; that the tax shall be 2 per cent of the clear value of so much of the property as is transferred to or for the use of designated relatives of the decedent and 5 per cent of the clear value of so much of it as is transferred to or for the use of others; and that the clear value shall be ascertained by taking the gross value of the estate and deducting therefrom the decedent's debts and the expenses of administration, but without making any deduction for taxes paid to the United States or to any other State.

In applying this statute to the Frick estate the taxing officers included the value of the tangible personalty in New York and Massachusetts in the clear value on which they computed the tax; and in fixing that value refused to make any deduction on account of the estate tax paid to the United States or the stock-transfer

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<sup>1</sup>This consisted of rare paintings, rugs, furniture, bronzes, porcelains and other art treasures known as "The Frick Collection" and housed in a building in New York City specially constructed for the purpose.

<sup>2</sup>This consisted of furniture, household furnishings, automobiles, tools, etc., in Mr. Frick's New York house and garage.

<sup>3</sup>This consisted of paintings, other objects of art, furniture, household furnishings, farming implements, etc., on Mr. Frick's estate at Prides Crossing.



taxes paid to other States. In proceedings which reached the Supreme Court of the State the action of the taxing officers and the resulting tax were upheld by that court, 277 Pa. 242. The matter was then brought here on writs of error under section 237 of the Judicial Code.

The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in States other than Pennsylvania it transcends the power of that State, and thereby contravenes the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

This precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extra-territorial operation; and, thirdly, that as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicile of the owner. *Cleveland, Painesville and Ashtabula R. R. Co. v. Pennsylvania*, 15 Wall. 300, 319, 325; *Louisville and Jeffersonville Ferry Co. v. Kentucky*, 188 U. S. 385, 396; *Old Dominion Steamship Co. v. Virginia*, 198 U. S. 299; *Delaware, Lackawana and Western R. R. Co. v. Pennsylvania*, 198 U. S. 341, 356; *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194; *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 38; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 142.

In *Union Refrigerator Transit Co. v. Kentucky* the question presented was whether, consistently with the restriction imposed by the due process of law clause of the Fourteenth Amendment, the State of Kentucky could tax a corporation of that State upon its tangible personal property having an actual situs in other States. The question was much considered, prior cases were reviewed, and a

negative answer was given. The grounds of the decision are reflected in the following excerpts from the opinion:

"It is also essential to the validity of a tax that the property shall be within the territorial jurisdiction of the taxing power. Not only is the operation of state laws limited to persons and property within the boundaries of the State, but property which is wholly and exclusively within the jurisdiction of another State, receives none of the protection for which the tax is supposed to be the compensation. This rule receives its most familiar illustration in the cases of land which, to be taxable, must be within the limits of the State. Indeed, we know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any court. It is said by this Court in the *Foreign-held Bond case*, 15 Wall. 300, 319, that no adjudication should be necessary to establish so obvious a proposition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised. The argument against the taxability of land within the jurisdiction of another State applies with equal cogency to tangible personal property beyond the jurisdiction. It is not only beyond the sovereignty of the taxing State, but does not and cannot receive protection under its laws."

"The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is visible, easily found and difficult to conceal, and the tax readily collectible, is so cogent an argument for its taxation at its *situs*, that of late there is a general consensus of opinion that it is taxable in the State where it is permanently located and employed and where it receives its entire protection, irrespective of the domicile of the owner."

"The adoption of a general rule that tangible personal property in other States may be taxed at the domicile of the owner involves possibilities of an extremely serious character. Not only would it authorize the taxation of furniture and other property kept at country houses in other States or even in foreign countries, [and] of stocks of goods and merchandise kept at branch establishments when already taxed at the State of their *situs*, but of that enormous mass of personal property belonging to railways and other corporations which might be taxed in the State where they are incorporated, though their charters contemplated the construction and operation of roads wholly outside the State, and sometimes across the continent, and when in no other particular they are subject to its laws and entitled to its protection."

In *United States v. Bennett*, 232 U. S. 299, 306, where this Court had occasion to explain the restrictive operation of the due pro-

cess of law clause of the Fourteenth Amendment, as applied to the taxation by one State of property in another, and to distinguish the operation of the like clause of the Fifth Amendment, as applied to the taxation by the United States of a vessel belonging to one of its citizens and located in foreign waters, it was said:

"The application to the States of the rule of due process relied upon comes from the fact that their spheres of activity are enforced and protected by the Constitution and therefore it is impossible for one State to reach out and tax property in another without violating the Constitution, for where the power of the one ends the authority of the other begins. But this has no application to the Government of the United States so far as its admitted taxing power is concerned. It is coextensive with the limits of the United States; it knows no restriction except where one is expressed in or arises from the Constitution and therefore embraces all the attributes which appertain to sovereignty in the fullest sense. Indeed the existence of such a wide power is the essential resultant of the limitation restricting the States within their allotted spheres."

Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the State of its situs, and that the laws of other States have no bearing save as that State expressly or tacitly adopts them—their bearing then being attributable to such adoption and not to any force of their own. *Mager v. Grima*, 8 How. 490, 493; *Crapo v. Kelly*, 16 Wall. 610, 630; *Kerr v. Moon*, 9 Wheat. 565, 571; *Blackstone v. Miller*, 188 U. S. 189, 204; *Bullen v. Wisconsin*, 240 U. S. 625, 631; *Bank of Augusta v. Earle*, 13 Pet. 519, 589; *Hilton v. Guyot*, 159 U. S. 113, 163, 166.

The Pennsylvania statute is a tax law, not an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the State. But to impose either tax the State must have jurisdiction over the thing that is taxed, and to impose either without such jurisdiction is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of tangible personalty having an actual situs in other States—

New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those States and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that State nor subtracted anything from the jurisdiction of New York and Massachusetts. In these respects the situation was the same as if the property had been immovable realty. The jurisdiction possessed by the States of the situs was not partial but plenary, and included power to regulate the transfer both *inter vivos* and on the death of the owner, and power to tax both the property and the transfer.

Mr. Justice Story said in his work on Conflict of Laws, sec. 550: "A nation within whose territory any personal property is actually situate has as entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it, to the same extent that it may exert its authority over immovable property." And in *Pullman's Car Company v. Pennsylvania*, 141 U. S. 18, 22, where this Court held the actual situs of tangible personalty rather than the domicile of its owner to be the true test of jurisdiction and of power to tax, it was said: "No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State. The old rule expressed in the maxim *mobilia sequuntur personam*, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs*, the law of the place where the property is kept and used."

In support of the tax counsel for the State refer to statutes of New York and Massachusetts evidencing an election by those States to accept and give effect to the domiciliary law regulating the

transfer of personal property of owners dying while domiciled in other States; and from this they contend that the transfer we are considering was brought under the jurisdiction of Pennsylvania and made taxable there. We think the contention is not sound. The statutes do not evidence a surrender or abandonment of jurisdiction, if that were admissible. On the contrary, they in themselves are an assertion of jurisdiction and an exercise of it. They declare what law shall apply and require the local courts to give effect to it. And it should be observed that here the property was administered in those courts and none of it was taken to the domiciliary State. Obviously the accepted domiciliary law could not in itself have any force or application outside that State. Only in virtue of its express or tacit adoption by the States of the situs could it have any force or application in them. Through its adoption by them it came to represent their will and this was the sole basis of its operation there. *Burdick on American Constitution*, sec. 257. In keeping with this view New York and Massachusetts both provide for the taxation of transfers under the adopted domiciliary law; and they have imposed and collected such a tax on the transfer we are now considering.

Counsel for the State cite and rely on *Blackstone v. Miller*, 188 U. S. 189, and *Bullen v. Wisconsin*, 240 U. S. 625. Both cases related to intangible personalty, which has been regarded as on a different footing from tangible personalty. When they are read with this distinction in mind, and also in connection with other cases before cited, it is apparent that they do not support the tax in question.

We think it follows from what we have said that the transfer of the tangible personalty in New York and Massachusetts occurred under and in virtue of the jurisdiction and laws of those States and not under the jurisdiction and laws of Pennsylvania, and therefore that Pennsylvania was without power to tax it.

One ground on which the state court put its decision was that, in taxing the transfer of the property which the decedent owned in Pennsylvania, it was admissible to take as a basis for computing the tax the combined value of that property and the property in New York and Massachusetts. Of course, this was but the equivalent of saying that it was admissible to measure the tax by a standard which took no account of the distinction between what

the State had power to tax and what it had no power to tax, and which necessarily operated to make the amount of the tax just what it would have been had the State's power included what was excluded by the Constitution. This ground, in our opinion, is not tenable. It would open the way for easily doing indirectly what is forbidden to be done directly, and would render important constitutional limitations of no avail. If Pennsylvania could tax according to such a standard other States could. It would mean, as applied to the Frick estate, that Pennsylvania, New York and Massachusetts could each impose a tax based on the value of the entire estate, although severally having jurisdiction of only parts of it. Without question each State had power to tax the transfer of so much of the estate as was under its jurisdiction, and also had some discretion in respect of the rate; but none could use that power and discretion in accomplishing an unconstitutional end, such as indirectly taxing the transfer of the part of the estate which was under the exclusive jurisdiction of others. *Western Union Telegraph Co. v. Foster*, 247 U. S. 105, 114, and cases cited; *Looney v. Crane Company*, 245 U. S. 178, 188; *International Paper Co. v. Massachusetts*, 246 U. S. 135, 141; *Air-Way Corporation v. Day*, 266 U. S. 71, 81; *Wallace v. Hines*, 253 U. S. 66, 69; *Louisville and Jeffersonville Ferry Company v. Kentucky*, 188 U. S. 385, 395.

The state court cited in support of its view *Maxwell v. Bugbee*, 250 U. S. 525, 539. The case is on the border line, as is evidenced by the dissent of four members of the Court. But it does not go so far as its citation by the state court suggests. The tax there in question was one imposed by New Jersey on the transfer of stock in a corporation of that State. The stock was part of the estate of a decedent who had resided elsewhere. The state statute, described according to its essence, provided for a tax graduated in rate according to the value of the entire estate, and required that where the estate was partly within and partly without the State the transfer of the part within should bear a proportionate part of what according to the graduated rate would be the tax on the whole. The only bearing which the property without the State had on the tax imposed in respect of the property within was that it affected the rate of the tax. Thus, if the entire estate had a value

which put it within the class for which the rate was three per cent, that rate was to be applied to the value of the property within the State in computing the tax on its transfer, although its value separately taken would put it within the class for which the rate was two per cent. There was no attempt, as here, to compute the tax in respect of the part within the State on the value of the whole. The Court sustained the tax, but distinctly recognized that the State's power was subject to constitutional limitations, including the due process of law clause of the Fourteenth Amendment, and also that it would be a violation of that clause for a State to impose a tax on a thing within its jurisdiction "in such a way as to really amount to taxing that which is beyond its authority."

Another case cited by the state court is *Plummer v. Coler*, 178 U. S. 115, where it was held that a State, in taxing the transfer by will or descent of property within its jurisdiction, might lawfully measure the tax according to the value of the property, even though it included tax-exempt bonds of the United States; and this because the tax was not on the property but on the transfer. We think the case is not in point here. The objection to the present tax is that both the property and the transfer were within the jurisdiction of other States and without the jurisdiction of the taxing State.

For the reasons which have been stated it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other States, contravenes the due process of law clause of the Fourteenth Amendment and is invalid.

The next question relates to the provision which requires that, in computing the value of the estate for the purpose of fixing the amount of the tax, stocks in corporations of other States shall be included at their full value without any deduction for transfer taxes paid to those States in respect of the same stocks.

The decedent owned many stocks in corporations of States, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those States the status of lienors in possession.<sup>4</sup> As those

<sup>4</sup>The nature of the tax and the provisions adopted for enforcing it are illustrated by c. 357, secs. 1, 2, 13, Laws Kansas 1915, p. 452; c. 33, secs. 1, 6, 7, Barnes' West Virginia Code, p. 586.



States had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that State it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. *Estate of Henry Miller*, 184 Cal. 674, 683. So much of the value as was required to release the superior claim of the other States was quite beyond Pennsylvania's control. Thus the inclusion of the full value in the computation on which that State based its tax, without any deduction for the tax paid to the other States, was nothing short of applying that State's taxing power to what was not within its range. That the stocks, with their full value, were ultimately brought into the administration in that State does not help. They were brought in through the payment of the tax in the other States out of moneys of the estate in Pennsylvania. The moneys paid out just balanced the excess in stock value brought in. Yet in computing the tax in that State both were included.

We are of opinion that in so far as the statute requires that stocks of other States be included at their full value, without deducting the tax paid to those States, it exceeds the power of the State and thereby infringes the constitutional guaranty of due process of law.

The remaining question relates to the provision declaring that, in determining the value of the estate for the purpose of computing the tax, there shall be no deduction of the estate tax paid to the United States. The plaintiffs in error contend that this provision is invalid, first, as being inconsistent with the constitutional supremacy of the United States, and, secondly, as making the state tax in part a tax on the federal tax.

In support of the contention we are referred to several cases in which state courts have held that the federal tax should be deducted in determining the value on which such a state tax is computed. But the cases plainly are not in point. In them the state



courts were merely construing an earlier type of statute requiring that the state tax be computed on the clear or net value of the estate and containing no direction respecting the deduction of the federal tax. An earlier Pennsylvania statute of that type was so construed. Later statutes in the same states expressly forbidding any deduction of the federal tax have been construed according to their letter. This is true of the present Pennsylvania statute. The question here is not how the statute shall be construed, but whether, as construed by the state court, it is open to the constitutional objections urged against it.

While the federal tax is called an estate tax and the state tax is called a transfer tax, both are imposed as excises on the transfer of property from a decedent and both take effect at the instant of transfer. Thus both are laid on the same subject, and neither has priority in time over the other. Subject to exceptions not material here, the power of taxation granted to the United States does not curtail or interfere with the taxing power of the several States. This power in the two governments is generally so far concurrent as to render it admissible for both, each under its own laws and for its own purposes, to tax the same subject at the same time. A few citations will make this plain. In *Gibbons v. Ogden*, 9 Wheat. 1, 199, Chief Justice Marshall, speaking for this Court, said: "Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the States to tax for the support of their own governments; nor is the exercise of this power by the States an exercise of any portion of the power that is granted to the United States. In imposing taxes for State purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other." Mr. Justice Story, in his *Commentaries on the Constitution*, sec. 1068, said: "The power of Congress, in laying taxes, is not necessarily or naturally inconsistent with that of the States. Each may lay a tax on the same property, without interfering with the action of the other." And in *Knowlton v. Moore*, 178 U. S. 41, 58-60, Mr. Justice White, speaking for

this Court, said that "under our constitutional system both the national and state governments, moving in their respective orbits, have a common authority to tax many and diverse objects;" and he further pointed out that the transfer of property on death "is a usual subject of taxation" and one which falls within that common authority.

With this understanding of the power in virtue of which the two taxes are imposed, we are of opinion that neither the United States nor the State is under any constitutional obligation in determining the amount of its tax to make any deduction on account of the tax of the other. With both the matter of making such a deduction rests in legislative discretion. In their present statutes both direct that such a deduction be not made. It is not as if the tax of one, unless and until paid, presented an obstacle to the exertion of the power of the other. Here both had power to tax and both exercised it as of the same moment. Neither encroached on the sphere or power of the other. The estate out of which each required that its tax be paid is much more than ample for the payment of both taxes. No question of supremacy can arise in such a situation. Whether, if the estate were not sufficient to pay both taxes, that of the United States should be preferred (see *Lane County v. Oregon*, 7 Wall. 71, 77) need not be considered. That question is not involved here.

The objection that when no deduction is made on account of the federal tax the state tax becomes to that extent a tax on the federal tax and not a tax on the transfer is answered by what already has been said. But by way of repetition it may be observed that what the State is taxing is the transfer of particular property, not such property depleted by the federal tax. The two taxes were concurrently imposed and stand on the same plane, save as the United States possibly might have a preferred right of enforcement if the estate were insufficient to pay both.

In conclusion we hold, first, that the value of the tangible personalty in New York and Massachusetts should not have been included in determining the clear value on which the Pennsylvania tax was computed; secondly, that in determining such clear value the stocks in corporations of other States should not have been included at their full value without deducting the transfer tax paid

to such States in respect of those stocks; and thirdly, that there was no error in refusing to make any deduction from the clear value on account of the estate tax imposed by the United States.

Petitions for certiorari were presented in these cases, but as the cases are properly here on writs of error, the petitions will be denied.

*Judgments reversed on writs of error.  
Petitions for certiorari denied.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*